SENATE

MONDAY, MAY 27, 1935

(Legislative day of Monday, May 13, 1935)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Friday, May 24, 1935, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

TRIBUTE TO THE LATE SENATOR CUTTING

The VICE PRESIDENT laid before the Senate resolutions adopted by the House of Assembly of the State of New Jersey, which were ordered to lie on the table, as follows:

Whereas in the death of United States Senator Bronson Cutting, the United States of America has lost an outstanding citizen and a distinguished statesman; and

Whereas Senator Bronson Cutting has served with honor and distinction as a member of the United States Senate from the State of New Mexico for a long period: Now, therefore, be it

Resolved, That the House of Assembly of the State of New Jersey does hereby express its deep sorrow at the passing of United States Senator Bronson Cutting, through whose death the people of the United States have lost an earnest and conscientious servant and distinguished citizen; and be it further

Resolved, That copies of this resolution, duly signed by the speaker of the house of assembly and attested by the clerk of the house of assembly, be forwarded to the President of the United States, the President of the United States Senate, and the family of the deceased Senator Cutting, and that this resolution be spread in full upon the minutes of the house of assembly.

CALL OF THE ROLL

Mr. LEWIS. I note the absence of a quorum, and move a roll call.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Connally	La Follette	Radcliffe
Ashurst	Copeland	Lewis	Robinson
Austin	Costigan	Logan	Russell
Bachman	Couzens	Lonergan	Schall
Bankhead	Dickinson	McAdoo	Schwellenbach
Barbour	Dieterich	McGill	Sheppard
Barkley	Donahey	McKellar	Shipstead
Bilbo	Fletcher	McNary	Smith
Black	Frazier	Maloney	Steiwer
Bone	George	Metcalf	Thomas, Okla.
Borah	Gerry	Minton	Thomas, Utah
Brown	Glass	Moore	Townsend
Bulkley	Gore	Murphy	Trammell
Bulow	Guffey	Murray	Tydings
Burke	Hale	Neely	Vandenberg
Byrd	Harrison	Norbeck	Van Nuys
Byrnes	Hatch	Norris	Wagner
Capper	Hayden	O'Mahoney	Walsh
Caraway	Johnson	Overton	Wheeler
Carey	Keyes	Pittman	White
Chavez	King	Pope	

Mr. LEWIS. I announce the absence of the Senator from North Carolina [Mr. REYNOLDS], the Senator from Massachusetts [Mr. COOLIDGE], and the Senator from Wisconsin [Mr. DUFFY], being a committee appointed to visit the United States Military Academy.

I also announce that the Senator from North Carolina [Mr. BAILEY], the Senator from Missouri [Mr. CLARK], the Senator from Louisiana [Mr. LONG], the Senator from Nevada [Mr. MCCARRAN], and the Senator from Missouri [Mr. TRUMAN] are unavoidably detained from the Senate.

Mr. AUSTIN. I announce that my colleague the junior Senator from Vermont [Mr. GIBSON], the Senator from North Dakota [Mr. NYE], and the Senator from Delaware [Mr. HASTINGS] are necessarily absent, and that the Senator from Pennsylvania [Mr. DAVIS] is absent on account of illness.

The VICE PRESIDENT. Eighty-three Senators have answered to their names. A quorum is present.

ADDITIONAL CADETS AT UNITED STATES MILITARY ACADEMY

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 2105) to provide for an additional number of cadets at the United States Military Academy, which were, on page 1, line 6, after "Rico", to insert "one to be selected by the Governor of the Panama Canal Zone from among the sons of civilians of the Panama Canal Zone and the Panama Railroad resident on the zone"; on the same page, line 7, after the word "large", to insert "40 of whom shall be appointed on the recommendation of the academic authorities of the 'honor schools' as designated by the War Department"; and on the same page, line 11, to insert:

SEC. 2. The President is hereby authorized to call to active service annually, with their consent upon application to and selection by the War Department, for a period of not more than 1 year for any one officer, not to exceed at any time 1,200 Reserve officers of the combatant arms, Ordnance, and the Chemical Warfare Service for active duty with the Regular Army: *Provided*, That members of the Officers' Reserve Corps so called to active service shall be distributed as nearly as may be practicable among the said combatant arms, Ordnance, and Chemical Warfare Service in proportion to the commissioned strength of such arms and service and shall be apportioned in grades therein so far as possible as follows: Not to exceed 5 percent in the field grade, 15 percent in the grade of captain, 30 percent in the grade of first lieutenant, and 50 percent in the grade of second lieutenant: *And provided further*, That nothing herein contained shall affect the number of Reserve officers that may be called to active duty under existing laws, nor the conditions under and purposes for which they may be called.

The President is hereby and further authorized to commission annually in the Regular Army of the United States in the grade of second lieutenant, upon application to and selection by the War Department, from among those in all grades who have served 1 year with the Regular Army under the prior provisions of this act, not to exceed 75 officers annually who shall take rank from the date of their permanent commissions in the Regular Army.

And to amend the title so as to read: "An act to provide for an additional number of cadets at the United States Military Academy, and for other purposes."

Mr. SHEPPARD. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Patrick J. Haltigan, one of its reading clerks, announced that the House had passed without amendment the following bills of the Senate:

S. 1522. An act to provide funds for cooperation with public-school districts in Glacier County, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1523. An act to provide funds for cooperation with the public-school board at Wolf Point, Mont., in the construction or improvement of a public-school building to be available to Indian children of the Fort Peck Indian Reservation, Mont.;

S. 1524. An act to provide funds for cooperation with school district no. 23, Polson, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1525. An act to provide funds for cooperation with joint school district no. 28, Lake and Missoula Counties, Mont., for extension of public-school buildings to be available to Indian children of the Flathead Indian Reservation;

S. 1526. An act to provide funds for cooperation with the school board at Brockton, Mont., in the extension of the public-school building at that place to be available to Indian children of the Fort Peck Indian Reservation;

S. 1528. An act for expenditure of funds for cooperation with the public-school board at Poplar, Mont., in the construction or improvement of public-school building to be available to Indian children of the Fort Peck Indian Reservation, Mont.;

S. 1530. An act to authorize appropriations for the completion of the public high school at Frazer, Mont.;

S. 1533. An act to provide funds for cooperation with Marysville School District No. 325, Snohomish County, Wash., for extension of public-school buildings to be available for Indian children;

S. 1534. An act to provide funds for cooperation with the school board at Queets, Wash., in the construction of a public-school building to be available to Indian children of the village of Queets, Jefferson County, Wash.;

S. 1535. An act to provide funds for cooperation with White Swan School District No. 88, Yakima County, Wash., for extension of public-school buildings to be available for Indian children of the Yakima Reservation;

S. 1536. An act to provide funds for cooperation with the public-school board at Covelo, Calif., in the construction of public-school buildings to be available to Indian children of the Round Valley Reservation, Calif.; and

S. 1537. An act to provide funds for cooperation with the School Board of Shannon County, S. Dak., in the construction of a consolidated high-school building to be available to both white and Indian children.

The message also announced that the House had passed the following bill and joint resolution of the Senate, each with an amendment, in which it requested the concurrence of the Senate:

S. 1212. An act to amend section 1383 of the Revised Statutes of the United States; and

S. J. Res. 88. Joint resolution to abolish the Puerto Rican Hurricane Relief Commission and transfer its functions to the Secretary of the Interior.

The message further announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H. R. 2756. An act authorizing the Tlingit and Haida Indians of Alaska to bring suit in the United States Court of Claims, and conferring jurisdiction upon said court to hear, examine, adjudicate, and enter judgment upon any and all claims which said Indians may have or claim to have against the United States, and for other purposes;

H. R. 3003. An act to provide for the commemoration of the two hundredth anniversary of the Battle of Ackia, Miss., and the establishment of the Ackia Battleground National Monument, and for other purposes;

H. R. 4354. An act to repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes;

H. R. 5210. An act to provide funds for cooperation with school district no. 17–H, Big Horn County, Mont., for extension of public-school buildings, to be available to Indian children;

H. R. 5213. An act to provide funds for cooperation with school district no. 27, Big Horn County, Mont., for extension of public-school buildings to be available to Indian children;

H. R. 5216. An act to provide funds for cooperation with Harlem School District No. 12, Blaine County, Mont., for extension of public-school buildings and equipment to be available for Indian children;

H. R. 5917. An act to appoint an additional circuit judge for the ninth judicial district;

H. R. 6204. An act to authorize the assignment of officers of the line of the Navy for aeronautical engineering duty only, and for other purposes;

H. R. 6315. An act to provide funds for cooperation with the school board at Medicine Lake, Mont., in construction of a public-school building to be available to Indian children of the village of Medicine Lake, Sheridan County, Mont.;

H. R. 6987. An act authorizing the State of Louisiana and the State of Texas to construct, maintain, and operate a free highway bridge across the Sabine River at or near a point where Louisiana Highway No. 7 meets Texas Highway No. 87;

H. R. 7081. An act to extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Brownville, Nebr.;

H. J. Res. 27. Joint resolution providing for extension of cooperative work of the Geological Survey to Puerto Rico; and

H. J. Res. 208. Joint resolution to provide for the observance and celebration of the one hundred and fiftieth anniversary of the adoption of the Ordinance of 1787 and the settlement of the Northwest Territory.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 1384. An act to amend the Emergency Farm Mortgage Act of 1933, to amend the Federal Farm Loan Act, to amend the Agricultural Marketing Act, and to amend the Farm Credit Act of 1933, and for other purposes;

H. R. 2046. An act to compensate the Chippewa Indians of Minnesota for lands set aside by treaties for their future homes and later patented to the State of Minnesota under the Swamp Land Act; and

H. R. 6114. An act to amend section 128 of the Judicial Code, as amended.

SUPPLEMENTAL ESTIMATE FOR LEGISLATIVE ESTABLISHMENT—CAPITOL POWER PLANT (S. DOC. NO. 64)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation for the legislative establishment, Architect of the Capitol, for the fiscal year 1936, in the sum of $5,500, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

ELECTRIC RATE SURVEY—STATE OF MAINE

The VICE PRESIDENT laid before the Senate a letter from the Chairman of the Federal Power Commission, transmitting, pursuant to law, a compilation, completed through the electric rate survey of the domestic and residential rates in effect in the State of Maine on January 1, 1935, which, with the accompanying papers, was referred to the Committee on Interstate Commerce.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate resolutions adopted by the Maine Petroleum Industries Committee, memorializing Congress to eliminate the Federal tax on gasoline, which were referred to the Committee on Finance.

He also laid before the Senate petitions of sundry citizens of the United States, praying for an investigation of charges filed by the Women's Committee of Louisiana relative to the qualifications of the Senators from Louisiana [Mr. LONG and Mr. OVERTON], which were referred to the Committee on Privileges and Elections.

He also laid before the Senate resolutions adopted by the board of governors of the Washington State Bar Association, and the board of trustees of the Seattle (Wash.) Bar Association, favoring the securing of suitable court rooms and chamber facilities for the Federal courts at Seattle, Wash., which were referred to the Committee on Public Buildings and Grounds.

He also laid before the Senate a petition of sundry citizens of Hattiesburg, Miss., praying for the prompt enactment of old-age-pension legislation, which was ordered to lie on the table.

He also laid before the Senate an act of the Legislature of the Territory of Hawaii to amend chapter 54 of title 7 of the Revised Laws of Hawaii, 1935, relating to public lands, by amending sections 1550, 1554, 1555, 1564, 1566, 1567, 1568, 1569, 1571, 1572, 1578, 1584, 1586, 1592, 1594, 1600, 1607, and 1936 thereof, by adding thereto four new sections to be known as "sections 1600–A, 1647–A, 1653, and 1654", and by repealing sections 1582, 1589, and 1599 thereof, which was referred to the Committee on Territories and Insular Affairs.

He also laid before the Senate the following joint resolution of the Legislature of the Territory of Hawaii, which was referred to the Committee on Territories and Insular Affairs:

Joint resolution requesting the Congress of the United States to amend the act entitled "An act to provide a government for the Territory of Hawaii", approved April 30, 1900, as amended, and known as the "Hawaiian Organic Act", by amending section 73 thereof, relating to public lands

Be it enacted by the Legislature of the Territory of Hawaii, That the Congress of the United States of America be, and it is hereby, requested to amend the act entitled "An act to provide a government for the Territory of Hawaii", approved April 30, 1900, as amended, and known as the "Hawaiian Organic Act", by amending section 73 thereof, relating to public lands, by enacting a bill in substantially the following form:

"An act to amend 'An act to provide a government for the Territory of Hawaii', approved April 30, 1900, as amended, and known as the 'Hawaiian Organic Act', by amending section 73 thereof, relating to public lands

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled—

"SECTION 1. The fourth paragraph of section 73 of the Hawaiian Organic Act is hereby amended by amending subdivisions (d), (f), (l), (k), and (l) of said paragraph to read as follows:

"'SEC. 73 (4)—

"'(d) No lease of agricultural lands or of undeveloped arid public land which is capable of being converted into agricultural land by the development, for irrigation purposes, of either the underlying or adjacent waters, or both, shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than 15 years. Each such lease shall be sold at public auction to the highest bidder after due notice by publication for a period of not less than 30 days in one or more newspapers of general circulation published in the Territory. Each such notice shall state all the terms and conditions of the sale. The land, or any part thereof, so leased may at any time during the term of the lease be withdrawn from the operation thereof for homestead or public purposes, in which case the rent reserved shall be reduced in proportion to the value of the part so withdrawn. Every such lease shall contain a provision to that effect: *Provided*, That the commissioner may, with the approval of the Governor and at least two-thirds of the members of the land board, omit such withdrawal provision from the lease of any lands suitable for the cultivation of sugarcane whenever he deems it advantageous to the Territory of Hawaii. Land so leased shall not be subject to such right of withdrawal.

"'(f) No person shall be entitled to receive any certificate of occupation, right of purchase, lease, or special homestead agreement who, or whose husband or wife, has previously taken or held more than 10 acres of land under any such certificate, lease, or agreement made or issued after May 27, 1910, or under any homestead lease or patent based thereon; or who, or whose husband or wife, or both of them, owns other land in the Territory the combined area of which and the land in question exceeds 80 acres of agricultural land; or who is an alien, unless he has declared his intention to become a citizen of the United States as provided by law. No person who has so declared his intention and taken or held under any such certificate, lease, or agreement shall continue so to hold or become entitled to a homestead lease or patent of the land unless he becomes a citizen within 5 years after so taking.

"'(l) The persons entitled to take under any such certificate, lease, or agreement shall be determined by the commissioner, with the approval of the land board, after public notice as hereinafter provided; and any lot not taken or taken and forfeited, or any lot or part thereof surrendered with the consent of the commissioner, which is hereby authorized, may be disposed of upon application at not less than the advertised price by any such certificate, lease, or agreement without further notice. The notice of any allotment of public land shall be by publication for a period of not less than 30 days in one or more newspapers of general circulation published in the Territory.

"'(k) The commissioner may also, with such approval, issue, for a nominal consideration, to any church or religious organization, or person or persons or corporation representing it, a patent for church purposes only, for any parcel of public land occupied continuously for not less than 5 years and still occupied by it as a church site under the laws of Hawaii.

"'(l) No sale of lands for other than homestead purposes, except as herein provided, and no exchange by which the Territory shall convey lands exceeding either 40 acres in area or $5,000 in value shall be made, except to acquire lands necessary for national-park purposes or for the national defense. No lease of agricultural lands exceeding 40 acres in area, or of pastoral or waste lands exceeding 200 acres in area, shall be made without the approval of two-thirds of the board of public lands, which is hereby constituted, the members of which are to be appointed by the Governor as provided in section 80 of this act; and until the legislature shall otherwise provide, said board shall consist of six members, and its members be appointed for a term of 4 years: *Provided, however*, That the commissioner shall, with the approval of said board, sell to any citizen of the United States, or to any person who has legally declared his intention to become a citizen, for residence purposes, lots and tracts, not exceeding 3 acres in area, and that sales of government lands may be made upon the approval of said board whenever necessary to locate thereon railroad rights-of-way, railroad tracks, side tracks, depot grounds, pipe lines, irrigation ditches, pumping stations, reservoirs, factories, warehouses, and mills, and appurtenances thereto, including houses for employees, mercantile establishments, theaters, banks, hotels, hospitals, churches, cemeteries, private schools, or other structures required in connection with the economic, industrial, educational, and religious purposes; and all such sales shall be limited to the amount actually necessary for the economical conduct of such business or undertaking: *Provided further*, That no exchange of government lands shall hereafter be made without the approval of two-thirds of the members of said board, and no such exchange shall be made except to acquire lands directly for public uses.'"

Mr. BARBOUR presented a resolution adopted by the New Jersey State Women's Republican Club, opposing title II of House bill 7617, relative to a central banking system, which was referred to the Committee on Banking and Currency.

Mr. FLETCHER presented resolutions adopted by members of the Sarasota County (Fla.) Agricultural Club, favoring the adoption of proposed amendments to the Agricultural Adjustment Administration Act so as to provide more adequate and effective control by the Secretary of Agriculture, which were ordered to lie on the table.

He also presented a petition of sundry citizens, being Spanish War veterans in the State of Florida, praying for the enactment of the so-called "Spanish War Veterans' pension bill", which was referred to the Committee on Pensions.

Mr. COPELAND presented a resolution adopted by the Rochester (N. Y.) Association of Credit Men, opposing the enactment of title 2 of the so-called "Banking Act of 1935", which was referred to the Committee on Banking and Currency.

He also presented a resolution adopted by the Essex County Farm Bureau Association, Westport, N. Y., favoring the imposition of increased tariff duties on imports of iron and ore, which was referred to the Committee on Finance.

He also presented resolutions adopted by Mount Vernon Post, No. 3, the American Legion, of Mount Vernon, N. Y., opposing the granting of clemency to Grover Cleveland Bergdoll, which were referred to the Committee on Immigration.

He also presented resolutions adopted by sundry Councils of the Sons and Daughters of Liberty, in the State of New York, protesting against the enactment of the so-called "Kerr bill", relative to the deportation of aliens, which were referred to the Committee on Immigration.

He also presented a resolution adopted by the Utica Lodge No. 116, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of Utica, N. Y., favoring the adoption of an amendment to the Constitution authorizing Congress "to make such laws as are necessary for the general welfare of the Nation", which was referred to the Committee on the Judiciary.

He also presented a resolution adopted by Aviators' Post, No. 743, the American Legion, of New York City, N. Y., favoring the furnishing of adequate equipment, hangar, and administrative facilities at Mitchell Field, N. Y., for the exclusive use of the Reserve Flying units of the Second Corps Area, which was referred to the Committee on Military Affairs.

He also presented a petition of members of the Bronx Irish American Civic Association of the Third Assembly District of the Bronx, New York City, praying for the enactment of pending legislation to issue a special commemorative postage stamp in honor of the one hundred and fifth anniversary of Commodore John Barry, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of sundry members of the Presbyterian Church of Webster, N. Y., praying for the enactment of the so-called "Costigan-Wagner antilynching bill", which was ordered to lie on the table.

DECLARATIONS OF WAR

Mr. WAGNER presented a resolution adopted by a national council meeting of the Steuben Society of America at Rochester, N. Y., which was referred to the Committee on Foreign Relations and ordered to be printed in the RECORD, as follows:

The Steuben Society of America in national council meeting assembled at the city of Rochester, N. Y., on the 30th and 31st days of March 1935—

"*Resolved*, That the United States of America shall never again engage in any foreign war;

"That in furtherance of such object it advocates the speedy adoption of an amendment to the Constitution as proposed by Congressman LUDLOW, of Indiana, to the effect that before any declaration of war shall be issued by Congress, the people of this country shall have had an opportunity to declare by referendum their decision on the question;

"That pending the adoption of such amendment, the Congress enact legislation laws effective during the continuance of foreign wars, namely:

"To prohibit lending of private funds to belligerents;

"To ban sales and shipments of goods of any sort to any belligerents;

"To ban sailings of American vessels in any disputed area;

"To disavow responsibility as a Nation for loss of property, life, or liberty by any American who disobeys the prohibitions set forth in any law of the United States in such event;

"To take the profits out of war and thereby prevent the transformation of the lifeblood of the young men of our country into a golden flow of dividends.

"We request a positive unequivocal statement from our Government that we are not concerned about the question as to where the blame may lie for the opening of hostilities between foreign countries or even a threat to the continuance of peace between them, and that it shall, in like manner, declare that it refuses to lend its moral or diplomatic support to any such foreign country."

REPORTS OF COMMITTEES

Mr. ASHURST, from the Committee on the Judiciary, to which was referred the bill (H. R. 4665) to authorize the appointment of a district judge to fill the vacancy in the district of Massachusetts occasioned by the death of Hon. James A. Lowell, reported it with amendments and submitted a report (No. 721) thereon.

Mr. BARKLEY, from the Committee on the Library, to which was referred the bill (S. 2899) to provide for increasing the limit of cost for the construction and equipment of an annex to the Library of Congress, reported it without amendment.

Mr. WAGNER, from the Committee on Public Lands and Surveys, to which were referred the following bills, reported them each with an amendment and submitted reports thereon:

S. 1186. A bill for the relief of Frank P. Ross (Rept. No. 722); and

S. 1490. A bill for the relief of Earl A. Ross (Rept. No. 723).

Mr. GIBSON, from the Committee on Claims, to which was referred the bill (S. 430) for the relief of Anna Hathaway, reported it without amendment and submitted a report (No. 724) thereon.

Mr. LOGAN, from the Committee on Claims, to which was referred the bill (S. 895) to carry out the findings of the Court of Claims in the case of the Atlantic Works, of Boston, Mass., reported it with amendments and submitted a report (No. 725) thereon.

He also, from the Committee on the Judiciary, to which was referred the bill (S. 11) to repeal section 389 of the United States Code, being section 239 of the United States Criminal Code, reported it with amendments and submitted a report (No. 726) thereon.

He also, from the Committee on Military Affairs, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 1949. A bill authorizing the President to order David J. Fitzgerald before a retiring board for a hearing of his case, and upon the findings of such board determine whether he be placed on the retired list (Rept. No. 727); and

H. R. 231. An act for the relief of Thomas M. Bardin (Rept. No. 728).

Mr. VAN NUYS, from the Committee on the Judiciary, to which was referred the joint resolution (H. J. Res. 107) authorizing the President of the United States of America to proclaim October 11, 1935, General Pulaski's Memorial Day for the observance and commemoration of the death of Brig. Gen. Casimir Pulaski, reported it without amendment.

Mr. TOWNSEND, from the Committee on Claims, to which was referred the bill (S. 1577) for the relief of Skelton Mack McCray, reported it with an amendment and submitted a report (No. 729) thereon.

He also, from the same committee, to which was referred the bill (S. 1084) for the relief of W. F. Lueders, reported it with amendments and submitted a report (No. 730) thereon.

Mr. WHEELER, from the Committee on Indian Affairs, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 1527. A bill to provide funds for cooperation with school district no. 17–H, Big Horn County, Mont., for extension of public-school buildings to be available to Indian children (Rept. No. 731); and

S. 1529. A bill to provide funds for cooperation with school district no. 27, Big Horn County, Mont., for extension of public-school buildings to be available to Indian children (Rept. No. 732) thereon.

Mr. THOMAS of Utah, from the Committee on Military Affairs, to which was referred the bill (S. 2584) to amend the act entitled "An act to recognize the high public service rendered by Maj. Walter Reed and those associated with him in the discovery of the cause and means of transmission of yellow fever", approved February 28, 1929, by including therein the name of Gustaf E. Lambert, reported it without amendment and submitted a report (No. 733) thereon.

Mr. CAREY, from the Committee on Military Affairs, to which was referred the bill (S. 2589) to authorize the presentation of a Congressional Medal of Honor to Lewis Hazard, reported it with amendments and submitted a report (No. 734) thereon.

Mr. SHEPPARD, from the Committee on Military Affairs, to which was referred the bill (S. 1010) for the relief of Fred Edward Nordstrom, reported it without amendment and submitted a report (No. 735) thereon.

He also, from the Committee on Commerce, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

H. R. 3285. An act authorizing a preliminary examination of the Oswego, Oneida, Seneca, and Clyde Rivers in Oswego, Onondaga, Oneida, Madison, Cayuga, Wayne, Seneca, Tompkins, Schuyler, Yates, and Ontario Counties, N. Y., with a view to the controlling of floods (Rept. No. 736); and

H. R. 6834. An act to revive and reenact the act entitled "An act authorizing Vernon W. O'Connor, of St. Paul, Minn., his heirs, legal representatives, and assigns to construct, maintain, and operate a bridge across the Rainy River at or near Baudette, Minn." (Rept. No. 737).

Mr. FRAZIER, from the Committee on Indian Affairs, to which was referred the bill (S. 2621) to provide funds for cooperation with the public-school board at Devils Lake, N. Dak., in the construction, extension, and betterment of the high-school building at Devils Lake, N. Dak., to be available to Indian children, reported it without amendment, and submitted a report (No. 738) thereon.

ENROLLED BILL PRESENTED

Mrs. CARAWAY, from the Committee on Enrolled Bills, reported that on the 24th instant that committee presented to the President of the United States the enrolled bill (S. 2311) to extend the times for commencing and completing the construction of a bridge across the St. Lawrence River at or near Ogdensburg, N. Y.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. ASHURST:

A bill (S. 2904) to prohibit the interstate transportation of prison-made products in certain cases; to the Committee on the Judiciary.

By Mr. COPELAND:

A bill (S. 2905) to increase the efficiency of the Coast Guard; to the Committee on Commerce.

By Mr. MOORE and Mr. BARBOUR:

A bill (S. 2906) to provide for exclusive jurisdiction of district courts sitting in equity over reorganization of railroads engaged in interstate commerce, and to vest special authority in the Interstate Commerce Commission relating thereto, and for other purposes; to the Committee on Interstate Commerce.

By Mr. THOMAS of Oklahoma:

A bill (S. 2907) for the relief of E. C. Beaver, who suffered loss on account of the Lawton, Okla., fire, 1917; to the Committee on Claims.

A bill (S. 2908) authorizing an appropriation for payment to the Delaware Tribe of Indians in the State of Oklahoma; to the Committee on Indian Affairs.

(Mr. WALSH introduced Senate bill 2909, which was referred to the Committee on Interstate Commerce, and appears under a separate heading.)

By Mr. BORAH:

A bill (S. 2910) to add certain lands to the Weiser National Forest; to the Committee on Agriculture and Forestry.

By Mr. WAGNER:

A bill (S. 2911) for the relief of Helen Mahar Johnson; to the Committee on Claims.

By Mr. JOHNSON:

A bill (S. 2912) to repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes; to the Committee on Immigration.

By Mr. BACHMAN:

A bill (S. 2913) for the relief of Maurice C. Poss; to the Committee on Military Affairs.

By Mr. FLETCHER:

A bill (S. 2914) to provide for the establishment of a corporation known as the "Federal Mortgage Bank" creating a permanent discount and purchase system for mortgages on urban real estate, designed by comprehensive yet conservative action, to fill a gap in the national financial structure to the end of stabilizing mortgage practice, easing mortgage credit, and by the establishment of an adequate agency preventing periodic frozen condition in financial institutions; to the Committee on Banking and Currency.

By Mr. NEELY:

A bill (S. 2915) for the relief of Joseph C. Holley; to the Committee on Post Offices and Post Roads.

By Mr. BARBOUR:

A bill (S. 2916) granting an increase of pension to Mary M. Bartlett; to the Committee on Pensions.

By Mr. SHEPPARD:

A bill (S. 2917) authorizing an appropriation to the American Legion for its use in effecting a settlement of the remainder due on, and the reorganization of, Pershing Hall, a memorial already erected in Paris, France, to the Commander in Chief, officers, and men of the expeditionary forces; to the Committee on Military Affairs.

By Mr. ROBINSON:

A bill (S. 2918) to provide for certain alterations in the gallery area of the Senate wing of the Capitol; to the Committee on Rules.

By Mr. THOMAS of Oklahoma (by request):

A bill (S. 2919) to authorize the collection of penalties, damages, and costs for stock trespassing on Indian lands; to the Committee on Indian Affairs.

By Mr. COPELAND:

A joint resolution (S. J. Res. 137) directing the Comptroller General of the United States to correct an error made in the adjustment of the account between the State of New York and the United States, adjusted under the authority contained in the act of February 24, 1905 (33 Stat. L. 777), and appropriated for in the Deficiency Act of February 27, 1906; to the Committee on the Judiciary.

By Mr. WAGNER:

A joint resolution (S. J. Res. 138) relative to inviting the International Statistical Institute to hold its session in the United States in 1939; to the Committee on Foreign Relations.

SALE OR SHIPMENT OF MISBRANDED ARTICLES

Mr. WALSH. Mr. President, I ask consent to introduce a bill to protect the public against fraud by prohibiting the sale or shipment in interstate or foreign commerce of misbranded articles, and for other purposes. In connection therewith I ask to have printed in the RECORD a short statement outlining the nature and purpose of the measure.

The VICE PRESIDENT. Without objection, the bill will be received and appropriately referred, and the statement will be printed in the RECORD.

The bill (S. 2909) to protect the public against fraud by prohibiting the sale or shipment in interstate or foreign commerce of misbranded articles, and for other purposes, was read twice by its title and referred to the Committee on Interstate Commerce.

The statement presented by Mr. WALSH is as follows:

This bill has been drafted after consideration of the provisions of and the procedure and judicial decisions under the Pure Food and Drug Act and the orders of the Federal Trade Commission and the judicial review of such orders relating to misbranding and false advertising.

The main purposes of this bill are threefold:

(1) It defines specifically what is "misbranding";

(2) It reinforces the enforcement powers of the Federal Trade Commission very materially by providing for judicial condemnation of misbranded articles; and

(3) It removes the necessity of applying the test of competition in cases of this kind under the Federal Trade Commission Act, and adopts the policy of protection to the public as well as of protection of one competitor against another.

In order to cover the specific purpose of a bill already before the Senate, subdivision (c) of section 3 of this bill specifically cares for the situation, so far as it is practicable, which the so-called "truth-in-fabric bill" is designed to meet.

The enforcement of this bill is placed in the hands of the Federal Trade Commission. Rather than to adopt the criminal penalties of the Pure Food and Drug Act, with their harsh punishment and consequences, the administrative and civil processes of the Federal Trade Commission Act, reinforced by judicial condemnation, are used.

This bill is designed to put an end to the evil which we all recognize and covers the entire question of misbranding, but does not attempt to settle the brands which shall be used for any article. It is founded on what is known as the "British Merchandise Marks Act", which has been in successful operation now for a good many years. It is a form of legislation which has been tried and has worked well and has prevented misbranding.

PAYMENT OF ADJUSTED-SERVICE CERTIFICATES

Mr. PITTMAN. Mr. President, I desire to introduce a bill and have it referred to the Committee on Finance. I should like also to have the bill printed in the RECORD, together with an explanatory statement of it. I may state that this is a bill introduced for the consideration of the Finance Committee in an attempt to reach a compromise on the bonus question.

I think it has been demonstrated quite clearly—at least it is plain to me—that there will be no so-called "bonus bill" passed at this session of the Congress unless a compromise can be reached which will be satisfactory to the President of the United States. I am satisfied that he has attempted to reach such an agreement through the so-called "Harrison bill", which was, of course, totally unsatisfactory to the ex-service man.

I do not believe, however, that we have gone beyond the point where we can win the President to a very much more liberal bill than the so-called "Harrison bill." For that reason I not only introduce the bill and ask that it be referred to the Committee on Finance, but I ask that it be published in the RECORD, together with a brief statement analyzing it.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

The bill (S. 2920) to provide for the payment of veterans' adjusted-service certificates, and for other purposes, was read twice by its title, referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

A bill to provide for the payment of veterans' adjusted-service certificates, and for other purposes

Be it enacted, etc., That title V of the World War Adjusted Compensation Act, as amended, is amended by adding at the end thereof the following new sections:

"SEC. 509. (a) Upon the filing of application by any veteran to whom an adjusted-service certificate has been lawfully issued, except a veteran who secures a loan on such certificate after the date of enactment of this section, and the surrender of such certificate and all rights thereunder (with or without the consent of the beneficiary thereof), the Administrator of Veterans' Affairs shall certify to the Secretary of the Treasury the amount of the face value of such certificate less the sum of (1) the amount of any deduction made under subdivision (c) of this section, and (2) 20 percent of the remainder after such deduction.

"(b) No certification shall be made under this section until the certificate is in the possession of the Administrator of Veterans' Affairs, nor until all obligations for which the certificate was held as security have been paid or otherwise discharged.

"(c) If at the time of filing application with the Administrator of Veterans' Affairs under this section, the veteran's certificate is held as security for the unpaid principal or interest on or in respect of a loan made pursuant to section 502, then the Administrator of Veterans' Affairs shall (1) pay or otherwise discharge such unpaid principal and so much of the unpaid interest accrued or to accrue as is necessary to make the certificate available for certification under this section, and (2) for the purpose of computing the sum to be certified under subdivision (a) of this section, deduct from the amount of the face value of the certificate the amount of such principal and so much of such interest, if any, as accrued prior to March 1, 1931.

"(d) An application under this section may be made and filed at any time before the maturity of the adjusted-service certificate (1) personally by the veteran, or (2) in case physical or mental incapacity prevents the making or filing of a personal application, then by such representative of the veteran and in such manner as may be by regulations prescribed by the Administrator.

"SEC. 510. Upon certification by the Administrator of the amount computed as provided in subdivision (a) of section 509, the Secretary of the Treasury shall—

"(1) Issue to the veteran negotiable coupon bonds of the United States bearing interest payable semiannually at the rate of 2½ percent per annum from January 1, 1935, to January 1, 1945, in the amount of the highest multiple of $50 contained in the amount so certified, and pay to the veteran the difference between the amount of such bonds and the amount so certified by check drawn on the Treasurer of the United States; or

"(2) If the President so directs, pay to the veteran in cash or by check the amount so certified.

"SEC. 511. (a) Notwithstanding any other provisions of law, the amounts necessary to make the payments authorized by sections 509 and 510 may be derived from any or all of the following sources in such proportion as the President may in his discretion determine:

"(1) From the proceeds of the sale of bonds, notes, certificates of indebtedness or Treasury bills of the United States issued under the Second Liberty Bond Act, as amended;

"(2) From United States notes issued under the provisions of paragraph (1) of subsection (b) of section 43, as amended, of the Agricultural Relief Act, approved May 12, 1933 (and the purposes for which notes may be issued under such paragraph are hereby extended to include payments under this act);

"(3) From the adjusted-service certificate fund;

"(4) From funds appropriated by the Emergency Relief Appropriation Act of 1935; and

"(5) From silver certificates issued against any silver in the Treasury which is not held as security for silver certificates under the provisions of the Silver Purchase Act of 1934; and the Secretary of the Treasury is hereby authorized to issue such certificates in any amount not in excess of the monetary value (as defined in said act) of the silver not held as such security.

"(b) There are hereby appropriated such amounts as may be necessary for the purposes of this act.

"SEC. 512. If the veteran dies after filing application under section 509 and before payment under section 510, the payment authorized by section 510 shall be made to the estate of the veteran."

SEC. 2. The Secretary of the Treasury is authorized to issue bonds under the Second Liberty Bond Act, as amended, subject to the limitations of this act, in such amounts as may be necessary for the issuance of bonds provided for by section 510 of the World War Adjusted Compensation Act, as amended. The bonds so issued shall be redeemable in lawful money of the United States on January 1, 1945.

SEC. 3. Subdivisions (b) and (c) of section 302, section 311, subdivision (b) of section 312, section 602, and subdivision (b) of section 604 of the World War Adjusted Compensation Act, as amended (U. S. C., Supp. VII, title 38, secs. 612, 621, 622, 662, and 664), are hereby amended, to take effect as of December 31, 1934, by striking out "January 2, 1935" wherever it appears in such subdivisions and sections and inserting in lieu thereof "January 2, 1940."

The statement presented by Mr. PITTMAN is as follows:

PITTMAN COMPROMISE BONUS BILL

This bill proposes to direct the Secretary of the Treasury to pay holders of the adjusted-service certificates by discounting the balance due 20 percent and forgiving the interest accrued since March 1, 1931, on all loans.

Discretion is vested in the President, in making such settlements, to resort to and use any one or all of the following means and in such proportions as he may deem advisable:

(1) By exchanging Government coupon bonds, bearing 2½-percent interest, maturing January 1, 1945;

(2) From the proceeds of the sale of Government bonds under the Second Liberty Bond Act;

(3) By Treasury certificates issued under authority of the Agricultural Adjustment Act of May 12, 1933;

(4) From the adjusted-service certificate fund;

(5) From funds appropriated under the work-relief bill of 1935;

(6) From the seigniorage derived from the profit realized on the purchase of silver.

HOUSE BILLS AND JOINT RESOLUTIONS REFERRED

The following bills and joint resolutions were severally read twice by their titles and referred or ordered to be placed on the calendar, as indicated below:

H. R. 2756. An act authorizing the Tlingit and Haida Indians of Alaska to bring suit in the United States Court of Claims, and conferring jurisdiction upon said court to hear, examine, adjudicate, and enter judgment upon any and all claims which said Indians may have, or claim to have, against the United States, and for other purposes; to the Committee on Indian Affairs.

H. R. 3003. An act to provide for the commemoration of the two hundredth anniversary of the Battle of Ackia, Miss., and the establishment of the Ackia Battleground National Monument, and for other purposes; to the Committee on Public Lands and Surveys.

H. R. 4354. An act to repatriate native-born women who have heretofore lost their citizenship by marriage to an alien, and for other purposes; to the Committee on Immigration.

H. R. 5917. An act to appoint an additional circuit judge for the ninth judicial district; to the Committee on the Judiciary.

H. R. 5210. An act to provide funds for cooperation with school district no. 17–H, Big Horn County, Mont., for extension of public-school buildings, to be available to Indian children;

H. R. 5213. An act to provide funds for cooperation with school district no. 27, Big Horn County, Mont., for extension of public-school buildings to be available to Indian children;

H. R. 5216. An act to provide funds for cooperation with Harlem School District No. 12, Blaine County, Mont., for extension of public-school buildings and equipment to be available for Indian children;

H. R. 6204. An act to authorize the assignment of officers of the line of the Navy for aeronautical engineering duty only, and for other purposes; and

H. R. 6315. An act to provide funds for cooperation with the school board at Medicine Lake, Mont., in construction of a public-school building to be available to Indian children of the village of Medicine Lake, Sheridan County, Mont.; to the calendar.

H. R. 6987. An act authorizing the State of Louisiana and the State of Texas to construct, maintain, and operate a free highway bridge across the Sabine River at or near a point where Louisiana Highway No. 7 meets Texas Highway No. 87; and

H. R. 7081. An act to extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Brownville, Nebr.; to the Committee on Commerce.

H. J. Res. 27. Joint resolution providing for extension of cooperative work of the Geological Survey to Puerto Rico; to the Committee on Territories and Insular Affairs.

H. J. Res. 208. Joint resolution to provide for the observance and celebration of the one hundred and fiftieth anniversary of the adoption of the Ordinance of 1787 and the settlement of the Northwest Territory; to the Committee on the Library.

AGRICULTURAL ADJUSTMENT ADMINISTRATION—AMENDMENTS

Mr. METCALF and Mr. MCKELLAR each submitted an amendment, and Mr. BANKHEAD submitted three amendments intended to be proposed by them, respectively, to the bill (S. 1807) to amend the Agricultural Adjustment Act, and for other purposes, which were severally ordered to lie on the table and to be printed.

Mr. BYRD submitted five amendments intended to be proposed by him to the so-called "Smith substitute amendment" to the bill (S. 1807) to amend the Agricultural Adjustment Act, and for other purposes, which were ordered to lie on the table and to be printed.

GOVERNMENT BY BLACKJACK

Mr. ASHURST. Mr. President, I desire to read a brief extract from an article by Mr. Raymond Clapper, in this morning's Washington Post. The headline is "Government by Blackjack Threatened."

Not so long ago many people were fearful that the United States was drifting into a dictatorship. But for the moment at least that fear has subsided. Now we are threatened with something worse—Government by blackjack.

What is happening to Senator CARL HAYDEN, of Arizona? He served in the House and is now in his second Senate term. Intelligent, tireless in working for the interests of his State, he averages well up in the higher senatorial brackets as a desirable legislator. He hasn't distinguished himself as a fanatical "new dealer" nor as a blind reactionary. He has done what an intelligent man would be expected to do, studied the problems as they arose and applied to them his best common sense. So, in the course of events, the soldier bonus came up and he voted to sustain the President's veto.

Within 24 hours after that news hit Arizona, petitions calling for his recall began to circulate. They don't want to wait until the end of his term and vote him in or out on the basis of his whole record. No; the minute he doesn't please one group, out comes the blackjack.

PAYMENT OF ADJUSTED-SERVICE CERTIFICATES

Mr. CAPPER. Mr. President, a very interesting statement by Ernest A. Ryan, adjutant of the Kansas Department of the American Legion, having to do with the President's veto of the bill providing for immediate payment of the adjusted-service certificates, was published recently in full in the Topeka Capital. In the course of his statement Mr. Ryan said:

The Legion has been the last to ask for the payment of these certificates. The State convention of the American Legion in session in Wichita, 1931, specifically stated that such payment should not be made. When President Hoover appeared before the national convention at Detroit in 1931, the Legion voted overwhelmingly to sustain his viewpoint that the National Treasury could not stand the burden of this expense.

It was only when it became the policy of the present administration to spend money to aid in economic recovery that the Legion came out whole-heartedly for this payment. This is a debt that has been contracted, and there is nowhere that public money could go to the grass roots better than to give it to that great cross section of American life who volunteered and were conscripted in the dark days of the war period.

I would like to have the President read, if he has not already done so, one of the messages of Elsie Robinson, noted news correspondent, in connection with the bonus-army march a few years ago.

She said in part as follows:

"There was a day, in 1917, when you and I stood on the edge of a city street and shouted until we were hoarse. Thousands of other Americans were massed beside us—two solid walls of humanity on either side of the street—walls that rocked and heaved and swayed with our hurrahing!

"Streaming down between those walls, like a golden river in their new khaki, with drums booming and trumpets blaring, and flags foaming against the bright blue sky, went our boys! The boys of America, young and eager and gay, going laughing off to war! The youth of America, leaving its home, its school, its proud first job—marching off to fight for you and for me!

"And you and I standing there, shoulder to shoulder, heart to heart, watching them go—shouting our pride!

"There was another day, in 1918, when we stood on the edge of a city pavement, trembling with pity, choking back our tears. Thousands of other Americans standing beside us—dark, watching walls of men and women from which came cheers that were wails, and a silence that was one long groan.

"And crawling down between those dark walls, feet dragging, eyes listless, came our boys. The boys of America, those that were not left behind in Flanders fields, beneath the poppies, boys broken and weary and haunted with horrors they would never forget, crawling back from war!

"The youth of America that would never again be young, crawling back to the home it no longer fitted, to the job that someone else held, to a dream it could not remember, to a love that looked at it with strange and startled eyes!

"But at least they were back! And you and I sobbed our gratitude for that. We touched the soiled khaki and the shattered flesh with pitying hands. And promised—how we promised! Promised that we'd make up for all they had suffered and lost. Promised that we would never forget; that as long as American blood ran red American hearts would remember the boys who had saved our ideals of democracy and freedom."

That is a picture which the American Legion would like to recall to the minds of those who scorn the war veterans today; who call them "chiselers", grafters, and selfish cliques, continually seeking new governmental gifts and gratuities.

RESTORATION OF INTERNATIONAL TRADE—ADDRESS BY SECRETARY HULL

Mr. HARRISON. Mr. President, I ask unanimous consent to have printed in the RECORD and appropriately referred a most interesting and illuminating address delivered by the Secretary of State on the occasion of Maritime Day and Foreign Trade Week.

There being no objection, the radio address of the Honorable Cordell Hull, Secretary of State, at Washington, Wednesday, May 22, 1935, on the occasion of maritime day and foreign-trade week, was referred to the Committee on Foreign Relations and ordered to be printed in the RECORD, as follows:

RESTORATION OF INTERNATIONAL TRADE INDISPENSABLE TO DOMESTIC WELFARE

To the wide-awake person, Foreign Trade Week is of large significance. I am proud to be one of the tens of thousands who in this week are coming together from coast to coast in an enthusiastic support of the effort, through the reciprocal trade-agreements program, to restore our foreign trade.

The commercial world today is a network of artificial and arbitrary trade discriminations and obstructions. Some $22,000,000,000 of international trade has been destroyed. Tens of millions of wage earners have been made idle. Commercial strife and retaliation render impossible that degree of understanding, friendship, and neighborly spirit on which all normal and necessary international relationships must rest. So long as a large part of the population of the various nations of the world is suffering severely for lack of adequate food or clothing or shelter, or the comforts necessary for reasonable contentment, progress in the ways of peace, or political stability, or disarmament, will be exceedingly difficult, while the sanctity of treaties and international contracts will be jeopardized, as recent years of experience have so clearly demonstrated.

The development of extreme economic nationalism is, in my judgment, the greatest curse of this age. It was the motivating force behind the efforts of every country during past years to seek self-sufficiency as the policy best suited to the requirements of each. In the practical significance of the term, we are all nationalists in the sense that we are all equally desirous of promoting the national welfare. Sensible nationalism contemplates sane and practical international relationships as a necessary means of promoting the national welfare. On the other hand, it was over-assertive nationalism which induced nations to reach out to acquire further territorial and commercial advantages to glorify their strength and satisfy their pride of empire that brought on the war.

When hostilities ceased, what the world needed, second only to peace, was, not the intensification of nationalist hostility, but international cooperation within the limits of national traditions and constitutions, and the greatest possible volume of international trade. For central and eastern Europe, divided into states whose size, position, and resources made them economically dependent upon one another, and whose boundaries cut across the established channels of commerce, and for raw-material and food-producing nations in other parts of the world, international trade was essential to existence. Moreover, between all nations and within all nations the war had created unbalanced and utterly dislocated financial and economic conditions. What was needed to assist in their correction was international trade. Instead of this, however, the commercial and financial policies of the post-war period led to the world-wide depression.

Today the whole world stands on the threshold of a great industrial and commercial revival. We have reached a point at which there is a firm technological basis for a strong substantial recovery in the heavy capital goods industries. The modern economic system, with its vast capital equipment, cannot pass through 6 years of intense depression without developing an immense volume of obsolescence, depreciation, and needed repairs and replacements. The stress of hard times has brought forth an immense volume of cost-reducing improvements requiring large capital outlays. In addition, the inventive spirit is not dead; new products and new processes are under way. Standing as we do on the threshold of this advance, it will, nevertheless, at once be evident to any clear-sighted person that the terrain ahead will not easily be reached. In order to make progress we are compelled to remove the obstacles that stand in the way—to rebuild the economic foundations and structures shattered and broken by the devastating depression.

No sensible person who has the slightest insight into the current economic situation can fail to realize that the international chaos in production, exchange, and distribution in which we now find ourselves is the most serious single obstacle which the world faces. The breakdown of international monetary stability, the utter dislocation of the international price structure, the trade jam, the damming up of surpluses, the artificial canalizing of trade by short-sighted preferential arrangements to which nations have clutched like drowning men in a desperate effort to survive, the destruction of equal trade opportunity in fair international competition, the effort on every hand to choke off every possible driblet of imports and, at the same time, to push exports by subsidies, dumping, and other artificial devices—it is of this stuff that the blockade is erected which holds in check the advance toward eco-

nomic prosperity. There are those who tell us that the way out of this impasse is to take over a complete regimentation of foreign trade; to control rigorously every allotment of foreign exchange; to impose definite quotas on every item imported; and to limit trade more and more to bargaining and bartering transactions. Of one thing we can be certain: any turning away from open channels of trade, or from the functioning of the price system under a system of stable exchanges, will make even the present low level of world trade seem large in comparison. Foreign trade cannot flourish by such methods. What we need is more freedom of enterprise so that individual tradesmen may again have the opportunity to hunt out the new openings and outlets for their merchandise wherever markets are available. No governmental bureaucracy, under a closely regimented foreign trade, could do other than to engage in small driblets of exchange of goods in contrast to the ceaseless energy of hundreds of thousands of merchants operating under an international price and monetary structure with equal opportunity for trade and commerce.

What I have said does not imply a policy of governmental negation in economic affairs. We must, of course, expect and support some measure of collaboration and control by international agreement to facilitate the disposal and orderly marketing of accumulated raw material and foodstuff surpluses. Likewise some measure of governmental regulation of many phases of economic life is under modern conditions indispensable.

The exchange of goods between agricultural countries and industrial countries has suffered a terrific decline in the last few years. Before the depression the six leading European industrial countries enjoyed 25.3 billion dollars of trade and this declined to 9.5 billion dollars in 1933. Similarly, six of the leading agricultural countries have suffered a loss of trade from 9.5 billion dollars to 3.2 billion dollars. Our own trade, both industrial and agricultural in character, declined from 9.6 billions to 3.7 billions last year. The industrial countries have been compelled to substitute inferior raw materials, to make expensive synthetic products at high cost, to pay three- or four-fold prices for food and other agricultural commodities. How long will the countries of the world pursue this wholly uneconomic and ruinous policy? How long will it take us to realize that it is necessary to stop the restrictive policy and develop instead a larger volume of purchasing power, opening up markets for surplus products.

We have seen the drift of country after country into a scheme of close regimentation of foreign trade. Still others will be drawn into these narrow restrictive policies, unless nations cooperate to restore the international price and commercial system. We have seen how in this drift the quantity of foreign trade has declined. Let it be said, in explanation of their action that the countries which have moved in this direction, have done so for the most part under the stress of difficult and intolerable conditions. They have sought by means of these makeshifts to secure a breathing spell. What is incomprehensible is that persons in this country, with the greater freedom which we possess, should deliberately choose to advocate so disastrous a policy. The countries which have moved in the direction of close regimentation of foreign trade have time and again made it clear that the policy they are following is one of desperation and that at the earliest possible moment they desire to pursue saner economic relations.

Confronted with these conditions, this country has embarked upon a trade-agreements program which has elicited splendid response from the nations of the world. This program means that we refuse to accept the defeatist attitude that says nothing can be done except to follow the countries hardest pressed into a scheme of foreign-trade regimentation. The defeatist position assumes that it is hopeless to increase our imports without destroying our domestic industries. The advocates of this position fail to realize what can be achieved by a scientific approach toward our tariff problem. We get a wholly wrong picture of our imports by thinking of them only in large categories. When we think of tariff readjustment we must not think in terms of textiles as a whole, of chemicals as a whole, or steel products as a whole, or any of the other large categories of products. Our imports consist of thousands and thousands of special varieties of products. A close examination of each of these thousands of commodities has already demonstrated, in the careful study that has been made by our trade-agreements committees, that it is perfectly possible for this and other countries to make simultaneously a careful revision of their respective tariffs which will permit a large expansion of mutually profitable trade. The person who attacks this problem by broad categories misses the whole point. What is necessary is the careful study, item by item, of every special classification. When this detailed approach is made toward the tariff, it will be seen that this country is in a position to make substantial trade agreements with foreign countries which will make possible an immense increase in our foreign trade to our national advantage. Only in this way can we develop a foreign market for our agricultural and industrial products. It is feasible by this method to expand our total trade by several billions of dollars. I need only to call your attention to the fact that in 1929 our imports of dutiable commodities were about 1,500 million dollars; last year our imports of dutiable goods were only 650 million dollars. We cannot restore on any sound basis the export markets for our agricultural and industrial surpluses unless we increase our dutiable imports to a volume that would make possible a normal flow of export trade. We should set as our immediate objective the expansion of foreign trade to at least the volume of foreign trade which we had in the predepression period. Contrasted with our present low level of imports of 1,655 million, our imports in 1929 were 4,400 million dollars. By seeking an appropriate balance of imports and exports, service items included, this trade would be placed on a sound financial basis.

This expansion of foreign trade, by opening up new markets and developing purchasing power, will win us not only a marked expansion in quantity of exports and of total output, but is also the only means by which a sound balance can be secured both in our internal and in the international price structure. The expansion of markets and the development of purchasing power means price advances erected not on artificial stilts but on the solid basis of purchasing power based on productive activity and the mutually profitable exchange of goods.

It is of utmost importance that the current artificial trends in foreign commercial policy be reversed. To reach this end requires an advance on many fronts. An effort must be made simultaneously to achieve an improved price-and-cost relationship in the several domestic economies, to reestablish equilibrium in the international price structure, to secure currency and exchange stability, and to remove step by step the current close regulations of foreign trade in form of quota restrictions, import licenses, exchange control, and clearing and compensation agreements.

At this juncture in world affairs, it is of utmost importance to press forward with trade agreements, to open up international markets and thereby improve the general international price situation and to bring the price levels of the various countries into closer relation with each other.

Our trade agreements program is being pushed forward as rapidly as is consistent with careful and thoroughgoing work. Not only is this program designed to bring about an expansion of foreign trade, but, carried forward as it is under the most-favored-nation principle, it is a powerful means of securing the reestablishment of fair competitive methods, of removing trade discriminations, and of reestablishing international good will in commercial relations. There are those who mistakenly believe that the policy of extending the concessions which we make in our trade agreements to countries which accord our commerce equitable and fair treatment is more hurtful than helpful to our own national interests. These people forget that, were we to abandon the most-favored-nation policy, we would at once stand to lose the benefits of the most-favored-nation rates which most foreign countries now accord us. The abandonment of this principle would at once mean a tremendous loss to American exports. It is a wholly mistaken notion that the pursuit of this policy is an act of pure generosity on the part of this country. In return for most-favored-nation treatment we get the benefit of most-favored-nation treatment. It is not true that we get nothing in return. The moment this policy were abandoned, fresh obstacles would arise all around against American exports at a staggering loss to our industries.

We have thus far completed 4 trade agreements and are now negotiating agreements with 14 additional countries. The list includes many of our leading suppliers and many of our best customers. The countries with which we have completed negotiations and with which negotiations are in progress cover 42 percent of our total foreign trade. Our negotiations reach out into all parts of the world—North and South America, Europe, and some of the European possessions in Africa and Asia. The number of countries is almost equally divided between America and Europe.

There are many reasons both in terms of proximity and neighborliness and in terms of distribution of natural resources which point toward a great expansion of trade between the countries of North and South America. This country needs a great variety of the tropical products produced in the Latin American countries, and these countries in turn stand in great need of our highly developed industrial products. We are on the eve of a genuine recovery in mutually profitable exchange of goods on this Western Hemisphere. A very heartening advance is already under way from the extraordinarily low levels to which the trade had fallen in the depression. This desirable trade could be greatly expanded by the conclusion of trade agreements. The benefits thus far received from the Cuban agreement are highly gratifying. This is the first of the agreements with the countries on the American continent.

We are also highly concerned with the expansion of our trade in other directions. Our trade with the European countries is of utmost significance. Our agreement with Belgium is the first with this area and others are on the way. Several of these are in advanced stage of negotiation. It is especially in this area that we must look for a restoration of our agricultural export market.

Washington in his day advised the United States to avoid entangling alliances, but Washington never advocated economic nationalism for his country. In Washington's time the sins of nations were almost wholly the sins of commission. A nation which lived solely unto itself was not a bad neighbor. The economic integration of the world has totally altered that situation. The sins of omission today rank equal with the sins of commission. A nation which now lives solely unto itself is a drag on civilization, increases the dangers of its own position, both economically and politically, stirs up international animosities, and threatens thereby the peace of the world. Economic isolation and self-containment are now the policies of the bad neighbor. Washington's advice against entangling alliances, in being translated into these terms, has been given a meaning which he unquestionably never intended it to have.

The world faces in this crucial hour a momentous decision. It is a choice between enlightened liberalism and selfish economic

nationalism. It is for us to play our part to insure the development of a stable and workable domestic and international structure, to restore economic prosperity, and to promote international good will and world peace.

OLD-AGE SECURITY—ADDRESS BY SENATOR HARRISON

Mr. MINTON. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered over the radio on the 26th instant by the Senator from Mississippi [Mr. HARRISON] on the subject of "Old Age Security."

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Among the major hazards of life which the President referred to in his historic message to Congress last June is the possibility of facing a penniless old age. It may happen to any person, no matter how careful he may be of his investments, and it is almost a certainty for many of our fellow citizens with meager incomes.

In response to the President's message, the members of his Committee on Economic Security, together with representatives of various groups of citizens and experts in pension systems, studied this problem for months, and then the Congressional committees entrusted with this legislation held weeks of hearings and thoroughly discussed the matter in extended executive sessions. Many plans have been submitted and subjected to the most painstaking examination.

The result of this careful labor is found in the old-age provisions of the pending social-security bill, which has passed the House of Representatives and is now before the Senate. It is the best solution which these groups of earnest workers can find to the problem of both alleviating, and to a large degree eliminating, the tragic spectacle of destitution among the aged.

The provisions of the bill with respect to security for the aged may be divided according to these two purposes, first, that of alleviating, and second, that of largely eliminating the sad prevalence of poverty in old age.

I shall first talk with you about the provisions intended to largely eliminate old-age dependence. This is a most important part of the bill, and is the part which is of direct interest to younger Americans. It offers them a secure old age, with an assured income built partly by their own efforts.

Beginning in 1937 the employees of the country—the regular workers in industry—will begin paying into the Federal Treasury a very small tax, which will be a minute percentage of their regular pay check. For every nickel that they pay their employers will likewise pay a nickel. Thus funds will be brought into the Federal Treasury which, in the course of time, will make it possible for all those employees to get regular monthly checks of anywhere from $10 to $85, after they reach the age of 65 and retire from regular employment. Under this Federal system the first regular benefits will begin in 1942. The amount which a man will receive will depend, of course, upon the amount of money which he earned during the years when he was employed and upon which he paid these taxes. The taxes that will be paid will gradually build up a sound reserve, which is to be invested, making it possible to continue these regular annuities without having to impose any other taxes to raise the money. If a person dies before reaching 65, his family receives the amount accumulated for him, and this is also true for persons who have contributed too short a time to build up any appreciable annuity.

This plan is expected to take care of a majority of our people in the future, but there are some groups necessarily omitted under this system, because of the fact that they are not employed by industry. It was thought proper, and the measure accordingly provides, that these groups, such as farmers and professional men, be also given the opportunity to build an annuity. Persons who desire, may, in very small installments or by lump-sum payment, purchase annuities from the Treasury, paying them up to $100 per month after they reach 65.

There is yet a third group to consider, those who now, or in the future, face a dependent old age, and have not been able to secure either of the annuities which I have just mentioned. For a complete old-age program this group must also be considered. This is the second part of the plan—providing for those whose old-age dependency cannot be eliminated by these annuities.

As is natural and fitting for such legislation in our country, the movement for old-age pensions began in the several States of the Union. The State legislatures acted and the State governments and county governments administered the laws. Thirty-three States, as well as the Territories of Alaska and Hawaii, have enacted old-age-pension laws. In 1934 over $30,000,000 was spent in these States for 230,000 pensioners, and the average pension paid to an aged person was about $15.50 per month.

Under the social security bill the Federal Government will come to the assistance of the States in making payments under their old-age-pension laws. The average pension now paid by the States is about $15 per person per month. Accordingly, up to $15 a month, the Federal Government will match whatever the States appropriate. This Federal aid will be given immediately to each State with a satisfactory plan for the administration of old-age pensions within its borders. Thus, the Federal Government will share equally in the generous work of helping needy persons above the age of 65 years.

The administration of the State laws will be left to the States, with an absolute minimum of Federal participation other than in the actual granting of the money itself. It is right and proper for the States, where the old-age-pension laws began, to go on administering those laws in their own way, for their own people whom they find to be in need.

To sum up, the social-security bill makes it possible for millions of persons to build a regular income for their old age during their productive period of life, and in addition to this, by matching State funds, assist the States to take care of those so unfortunate as to face old age without the annuities previously mentioned, or any other income of their own.

The necessity of the bill making this twofold attack upon destitution in old age can be readily appreciated when one realizes the terrific cost of trying to meet the problem by merely helping the States to pay gratuitous pensions. The number of needy old people is steadily increasing. The average length of life is getting longer; industrial civilization has made it harder for the young to care for their parents. For these reasons, if all we did was grant aid to the States for old-age pensions, the cost would grow enormously. The actuaries say that if this was the only way of taking care of the aged needy people, by 1960 the total annual cost of pensions, to the State, Federal, and local governments would be as much as $2,000,000,000. In writing the social-security bill, therefore, it was found necessary to look around for additional means of meeting this problem; and the thing that has been proposed and sponsored by the President is the national system of old-age annuities which I have already described, and which will not begin at once, but which will be self-supporting and paid for in large part by the very people who will get the benefits.

By inaugurating this system—and this is very important—we will be saving ourselves a vast amount of money, for this new national system will make it possible to cut in half the costs which we would otherwise have to bear in paying the old-age pensions under the State laws. I have said that the actuaries figured that in the absence of any all-embracing Federal system the cost by 1960 for State old-age pensions would be $2,000,000,000. With the self-supporting Federal system in existence, however, the annual cost by 1960 for the State old-age pensions would almost certainly be less than $1,000,000,000. This Federal system, therefore, would mean a saving of over a billion dollars a year.

It is well worth while to remember this tremendous saving, for it makes insignificant the small burden which industry will have to assume under this uniform national system. The tax on employers, under this system, does not begin until 1937, and even when it reaches its maximum in 1949 it will amount, on the average, to only something like 1 percent of the regular selling price of the employers' product. This is indeed a small amount to pay for a system which will save the country over a billion dollars a year, and will bring assurance of a small but regular income to more than one-half of our working people.

Besides the saving to the Nation as a whole, the annuity system will give to the worker the satisfaction of knowing that he himself is providing for his old age.

The social-security bill is the nearest approach to the ideal that could be reached after months of patient study. It is within the financial ability of our Government and achieves in the largest measure found possible the ideal of our great President of banishing the gaunt specter of need in old age.

President Roosevelt, his Committee on Economic Security, the House of Representatives, and the United States Senate are making these efforts to establish a sound and far-reaching method of dealing with the problem of destitution in old age. In taking this great forward step we cannot expect perfection all at once; but in the social-security bill we have an instrument which inaugurates a program that is at once economical and humane, and which will be a legislative landmark in the history of the efforts of the Congress to carry out its constitutional duty of promoting the general welfare of the men and women of the United States.

SOCIAL SECURITY—ADDRESS BY SENATOR THOMAS OF UTAH

Mr. BACHMAN. Mr. President, on Friday last the distinguished Senator from Utah [Mr. THOMAS] delivered over the radio a brief but very interesting address on the broad phases of the social-security program. I ask unanimous consent that his address may be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

In responding to this invitation of the National Broadcasting Co. to discuss social security it will not be my purpose to defend or talk concerning the social-security act which is pending in Congress. I wish to discuss social security in its broad aspects as a political concept. Anything which will better the condition of the men, women, and children, who live in a given country, and which will enable men, women, and children to live a broader, better, and more abundant life may be justified as a proper governmental function. To justify it under our American Constitution may be relatively difficult, but surely it has a place when consideration is given to the general-welfare clause of our Constitution's preamble.

As a sound economic principle the theory of social security used as a political concept is merely the taking over into politics of the social and economic idea of insurance. The economic theory behind insurance is that many people donate a little for a long time that some few may enjoy the fruits of that donation for a little time. Or to make the theory apply to the individual as it does in case of life insurance, small premiums paid over a long period make it possible for beneficiaries to receive large sums. Insurance is merely finance used socially. Much of our financial organization is socialized finance.

A social-security program is very much larger and more comprehensive than a recovery program. In order to become effective in our country it will be necessary for the program to meet the requirements of our constitutional scheme; that is, it must meet both Federal and State requirements.

This in itself is an aspect of social politics because it develops the partnership idea between the Federal and the State Governments and emphasizes what every citizen of the United States has known since the adoption of the fourteenth amendment, that American citizens have a dual citizenship; that is, they are citizens of the United States and of the State in which they reside.

The social-security program must be all-embracing because each of four great factors related to the social-security program is related to the other three, that is, the old-age-pension idea to become effective, must be thought of as part of the whole scheme instead of a scheme by itself, because the old-age pension must come after years of planning if it is ever to succeed properly. It has the aspect of retirement, and that, too, honorable retirement. The thought is not just to make the aged people independent in their old age; it is also to take the responsibility for caring for the old off the shoulders of the young. This, of course, makes for better and happier young lives as well as better and happier old ones.

The program, too, should provide for early retirement in order that men may fill the responsible positions of life at an earlier time.

You see, therefore, old-age insurance is related to unemployment; it is related to the idea of economic independence not only for those who are insured but also for those related to them, and it makes the insured the agent for his Government in making for better and broader living. That the persons to be benefited must contribute goes without saying, because any good which comes carries with it a responsibility. Then, too, we want old-age benefits to be honorable. The persons who are to receive pensions should be encouraged to feel free in taking them, and free from the thought they are singled out by a paternal state as helpless individuals. Our whole public-school system would fail if a mother of many children ever thought it wrong to send all of them to school because her neighbor, perhaps, has only one or none to be trained. My point there is that no one now questions the right of a child to be educated. Just so, the time must come when no one shall question the right of those who are past the earning age to live a life free from the ordinary economic worries. All must contribute for the good of all. Public attention to social security will result in persons taking for themselves private annuity policies to augment the public ones.

The partnership idea is the one that I would stress. Partnership between the Federal Government and the States; partnership between the old and the young; partnership between the employer and the employee; partnership between those out of a job and those who are working; and partnership between public and private insurance institutions. All will be benefited. The prime fact of man's interdependence with other men should be brought into our political and social life and made part of our thinking. Too long we have left this to the church institutions.

American democracy can be preserved only by preserving the individual in that democracy. An American must remember that he is one in a group of 125,000,000 others. He must never fuse himself into a fraction and think of himself as one-one hundred twenty-five millionth of the whole. The individual as a political entity will last only so long as private property and private ownership last. Social security will teach the individual throughout his whole life the notion of interdependence and in addition to that it will teach the value of ownership. In the past we have tried to attain these ideals by stressing, in our teaching of the children, thrift and competition. The real lesson of life will come when men realize that they cannot be happy while their neighbors are sad.

HOW BUSINESS CAN HELP THE CONGRESS—ADDRESS BY SENATOR DIETERICH

Mr. O'MAHONEY. Mr. President, I ask unanimous consent to have printed in the RECORD a radio address delivered by the Senator from Illinois [Mr. DIETERICH] on the 24th instant, on the subject of "How Business Can Help the Congress."

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Fellow citizens of the radio audience, we are told that business is waiting for Congress to adjourn. Business can hasten the adjournment of Congress by doing its part in speeding up the wheels of industry, by having faith in the future, by manifesting that faith in opening up the sources of employment, and by thus sharing part of the hazards with its Government.

We are told that threatened Government interference is such that business and industry fear to risk the investments necessary to start the machinery of production and distribution moving.

In this business and industry are not altogether at fault. Members of Congress are not insensible to the fears and the difficulties confronting business in these unusual times when the demagogues and the authors of panaceas hold the spotlight and advise the idle.

It must also be observed that business is not altogether blameless. The slow recovery is to some degree due to the stubborn attitude of some industrialists and business men to abandon unfair and unethical practices which are understood and condemned by our people and which are injurious to society.

Promotional and speculative schemes which have for their purpose making easy money have been productive of inestimable harm. As an example, I call your attention to the experiences of our people with the stock market some 5 years ago, which experiences still remain a bitter and sorrowful memory.

While many of the evils have been corrected, a return to some of the old practices is affecting our economic life today.

Among such practices which I have in mind is the periodical dumping of industrial stocks upon the market by those in control of the industry, permitting the industry to become or remain inactive and idle for the purpose of depressing the market prices of such stocks and then when they have reached the desired low level, recapturing them at such depressed prices prior to again operating the industry.

The last dumping of stock took place about a year ago and as usual was an anticipation of business revival.

But with these last dumpings an unusual thing has happened. The stock market for the past few months has told an unusual and strange story. The dumped stocks have been taken up in odd-lot purchases. The record of those purchases shows a wider distribution among the investing public of moderate means than any other period in our industrial history. They clearly indicate that the citizen of average financial ability has confidence that industrial recovery will and is taking place.

This will perhaps be the first time that those who have thrown their stocks upon the market expecting to buy them later on at a reduced price will be obliged to pay more instead of less than the price at which they were sold if they would repossess themselves of such stocks.

The ill-advised attempt to hold back recovery to serve this speculative purpose is only productive of more ills and more so-called "interference."

The stock market has almost always been considered as an indication of whether or not business was good or bad. It should now, with the safeguards that have been thrown around it, serve as a better barometer of business conditions. Anyone who will take the time to study the records of the past few months can come to no other conclusion than that the market points unmistakably to a definite healthy upward trend.

If industry will take its usual hazard and cooperate with the administration in control of the Government, it can do much, not only to hasten the early adjournment of the Congress but also relieve the political witch doctor of his audience.

While it is not for me to place an estimate upon any of the Members of either of the two branches of the Congress, I think I can, without violating the rules of propriety, say that this Congress, like all other legislative bodies, contains both statesmen and politicians; that this Congress, as all other legislative bodies, has within it two prominent types of politicians—the one who is a representative of a certain group and whose sole service consists in securing for the particular group that he represents the enactment of legislation which will give his group an advantage over all the other groups; the other is the politician who has become expert in detecting the trend of popular sentiment, who chameleonlike shapes his legislative course in mimicry of every shade of temporary popularity that sweeps across his constituency, one who can weigh the strength of propaganda much better than he can analyze the effect of legislation.

While the politician may receive the lion's share of advertising by reason of his readiness to make copy for the newspaper boys, his type by no means represents the majority of either branch of the Congress. If I may be so presumptuous as to judge, I am happy that, in my judgment, the vast majority in both branches of Congress are men of intelligence and courage, capable of giving statesmanlike consideration to the measures pending before them and whose regard for their obligations of duty to legislate for the public good is of greater concern to them than their political fortunes.

I make the above observation to assure business that, in my humble judgment, the Congress as a whole is worthy of the confidence of the business men of this country; that the legislative measures which produce in the business man's mind fear and forebodings almost invariably reflect the mind of the author and not the attitude of the Congress or the administration.

While these unusual times have brought to the surface unusual theories as to what would remedy our ills, and while some of these theories have found their expression in legislative measures introduced for the consideration of the Congress, it must be remembered that most of these measures are the result of these unusual times and the sooner that business and industry will aid in bringing to an end these unusual conditions, the sooner business and industry will be safe from such fears and such interference.

The authorization of $4,800,000,000 to be expended in the manner directed in the resolution containing the authorization was appropriated for the purpose of relieving unemployment by carrying out a program which would hasten business and industrial recovery.

The effect of the expenditures under the appropriation should reflect itself in every industry in this country.

If industry will assume the proper spirit and benefit by this help, not treating it as a mere business dole, but regard it as a support to assist in raising business out of its present condition so that it can assume and again regain its normal fields of operation, it will repay our people manifold. Otherwise it will be wasted effort.

American business and industry are directed by the intelligent minds of our country. They should understand that the Congress, as a whole, is concerned in their problems, the hope of the Repub-

lic lies in their recovery, that they can do more to bring this recovery about than the administration or the Congress.

Business and industry should understand that, when they refuse to cooperate whole-heartedly with the administration and Congress, they strengthen the influences at work in this country which have for their object the destruction of all private enterprises.

I wish to thank the National Broadcasting Co. for the courtesy of extending to me its facilities to deliver this message.

ADDRESS BY POSTMASTER GENERAL FARLEY AT DEDICATION OF PHILADELPHIA POST OFFICE

Mr. GUFFEY. Mr. President, the new United States post-office building at Philadelphia, Pa., was dedicated on Saturday last. On that occasion Postmaster General Farley delivered an able and interesting address, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Mr. Chairman, ladies, and gentlemen; the honor of participating with the citizens of Philadelphia in the dedication of their magnificent new post-office building is one that is greatly appreciated.

This building is more than a beautiful edifice of classic design and splendid proportions. It is the monument between an epoch that has passed and the beginning of a new era that is bringing happiness and prosperity to all.

It is the home of an establishment, owned and managed by the people—an establishment to which they confide their most sacred and personal confidences—an establishment which facilitates the transmission of their business correspondence, their papers, and their merchandise. It is also an institution that safeguards the peoples' earnings, and transmits their money wherever desired.

It is fitting that this building be dedicated to the uses of all the people—dedicated in the presence of the distinguished and representative men and women of Pennsylvania with impressive ceremonies.

It is proper that those who will work within its walls should see today that which will give them higher concepts of public office and a greater realization that as servants of the people a public office is a public trust.

The honesty and the efficiency with which our great postal establishment is conducted reflects itself in the private lives of families and individuals; in the welfare of our great agricultural, industrial, and financial enterprises, and in the political integrity of the Nation.

This has been true from the beginning. There is a beautiful inscription on the new Post Office Department Building in Washington, describing the purposes of the Postal Service and its closeness to the people. It was written by Postmaster General Joseph Holt over 75 years ago when he was confronted with a postal deficit that amounted to 87 percent of the post-office revenues. He was confronted also with demands by special interests that would still further open the Postal Service to exploitation and increase this deficit—a deficit which must always come out of the pockets of the taxpayers.

The Postmaster General, whose words supplied this beautiful inscription, stated concerning the Post Office Department:

"Naturally such an institution has ever been, and still is, a cherished favorite with the American people."

What my predecessor felt does not at all show in the inscription. He stated, in further reference to the Post Office Department:

"The country has constantly manifested the most intense solicitude for the preservation of its purity and the prosperity of its administration, and it cannot now be disguised that the guilty abuse of its ministrations and the reckless waste of its hard-earned revenues, connected with the humiliation to which it has in consequence been exposed, have deeply and sadly impressed the public mind."

I feel I have a thorough understanding of the thoughts of the people. I know that the people now, as they did 75 years ago, constantly manifest a most intense solicitude for the purity and prosperity of the administration of the Post Office Department. We in the Postal Service shall endeavor to continue to interpret the feelings of the American people, as we believe we have for the past 26 months, by providing them a satisfactory Postal Service without waste or extravagance.

Now, I want to say a word to and about the faithful army of post-office employees. I have traveled innumerable miles through every section of the country since I assumed my present place in the Government, and wherever I stopped I visited the local post office to meet the men who were doing the work, so I am proud to claim acquaintance with some thousands of them. I only wish I could know them all, for a more loyal, efficient, square-shooting group could be found nowhere. I came to the Department a stranger. The postal employees did not know me and I did not know them, but I was immediately struck by their conscientious attention to their duties and their sense of responsibility to the public. My success in the post office—if I have had any success—is due not to me but to them—all of them, from those at the top down to the messengers. We went through a period of distress in the Department as elsewhere. It was necessary to give furloughs and make other adjustments, for the volume of business had declined to a point where there was not work for all. They took the situation uncomplainingly and accepted my promise, that conditions would be restored as soon as possible, at its face value—a promise I was able to keep sooner than we anticipated because of the early restoration of business. I am happy and grateful that I can tell you that during the period of hardship there was no let-down anywhere along the line in their devotion to duty. They shouldered their additional tasks cheerfully and did them well. No department head has had more consideration from his staff than I have had from these friends, for I flatter myself that they are my friends—and I owe them much.

It is particularly fitting that the great city of Philadelphia should lead the way in good mail service and good government. Here lived the founder of the North American postal system—Benjamin Franklin, patriot, philosopher, statesman, inventor, newspaperman, postmaster, and Postmaster General under the Continental Congress.

From the days of William Penn, freedom and independence have been in your air—freedom of speech, freedom of religion, and freedom of the press. Franklin provided and developed a mail service for the Colonies which, with a free press and a free people, have made the United States the most respected Nation in the world. The press also became the strongest force in our Government. The checks and balances preventing its freedom from degenerating into license are in the newspapers themselves and in the intelligence of the people as a whole. The radio has added another stabilizing influence.

It is interesting to note that when dictators assume control the first thing they do is to take prompt steps to destroy any freedom the press might have, through the strictest kind of censorship. Thomas Jefferson believed that we would have free government so long as the dissemination of information through the newspapers was unhampered. His judgment has been well vindicated.

We have always had the closest association between the post office and the press in this country. The connection may still be noted in newspaper names such as the "Post", the "Mail", the "News Letter", and so on. Inevitably the press and the post office are linked in the circulation of information, and perhaps this is due to the fact that Franklin was himself a journalist. We have a hint in Washington's Farewell Address, that he, like Jefferson, recognized that freedom could not exist except by seeing to it that the people were kept advised of every step in our history. Said Washington:

"In proportion as the structure of a government gives force to public opinion, it should be enlightened."

It is not only by distributing the news that the post office has contributed to the education of the people. In the days of the stagecoach and the pony express every community gathered at the post office. The arrival and departure of the mails was a community event, for the Postal Service constituted the one regular contact of each town with the rest of the country. So every such day was a sort of convention which brought about an exchange of views. There opinion was formed and disseminated.

It was out of this exchange of ideas that the Congressmen of the early days acquired a knowledge of what their constituents were thinking about—what they wanted in the way of legislation and what they objected to. So when the legislator made his long and arduous journey to the Capital he carried with him a program for his Commonwealth. And when he met his colleagues from the other States, each armed with a similar schedule of the desires of the citizens, one program was rubbed against the others and out of this came the early legislation, the historical debates, the compromises among conflicting sectional needs, as the foundation stones of our great country were laid.

Philadelphia saw the beginnings of the structure that was to become the richest, most powerful Nation in the world. It was here that the site for the District of Columbia was determined—one of the great compromises that served to weld us into the close-knit Nation that has withstood every shock and crisis, of peace or war.

It is more than a century since Philadelphia outgrew the informal citizens' meetings at the post office, but from such buildings as that we are dedicating today there continues to radiate the news and the views of the people. My friend, Governor George H. Earle, guides the destinies of your State, as did Governor Mifflin in the days when President Washington was being scolded for extravagance because he paid $3,000 a year rent for the residence a few blocks from here which housed the Presidents until the Capital was moved to the new District of Columbia.

My friend Senator JOSEPH F. GUFFEY and his colleagues in both Houses of Congress carry the wishes and desires of Pennsylvania to Washington, as did Senators who went to the Senate from the office of Mayor Dallas, of Philadelphia, when it took a week to get over the ruts and rocks of the primitive highway that led to Washington. JOE GUFFEY, if he is in a hurry, hops a plane and is on the job at the Capitol in an hour, and the same plane carries your mail.

The methods change but the old principles remain—the obligation of public service, and the duty to keep faith with your constituents, and truly represent them.

This post office is an instance of just that thing. Your Senators and Congressman brought word to Washington of the necessity of a new and greater post office if the work of handling the mails was to be done efficiently, conveniently, and speedily. Congress listened to them, and behold the result.

You have here a beautiful building of granite and sandstone covering the whole of one of your great commercial blocks. It did not come to you as a favor from your Government, but in a monument to the eminence of your beautiful and enterprising city. Philadelphia got this structure because its growth and progress

had made the old facilities for handling the mails at this imposing center inadequate.

In erecting this building, at a cost of about $7,000,000, the Federal Government acted as one of your own great business men acts. He recognizes that unless his business is to suffer he must keep pace with his expanding activities. In the 20 years preceding the appropriation for your new post office, the receipts nearly trebled. Today the receipts of the Philadephia post office for a single year are more than double the cost of this building.

And it is your building in more than the fact that it is located in this city. The plans for it were prepared by Philadelphia architects, Ranken, Kellogg & Tilden, and another Philadelphia firm, Register & Pepper, served as associate architects.

It is the last word in post-office construction, for into it has gone the experience of a century in the highly specialized business of receiving, forwarding, and distributing the correspondence of the American people. Postmaster Joseph F. Gallagher will have at his command inventions and contrivances undreamed of by even his comparatively recent predecessors. These things contribute largely not only to the saving of time but to the actual saving of money, for the direct, almost automatic transfer of mail to the railroad terminals connected with this institution affects a saving, huge in amount, because of the elimination of truck service for the stupendous Philadelphia mail. I wonder what Mr. Robert Patten, Philadelphia's first postmaster, would have thought of the machine over which his present successor presides—assuming that he had time to think of anything in a a period when the laming of a horse, a big snowstorm, or a bridge-destroying freshet, threw the whole service into confusion and compelled rerouting and all sorts of expedients in order that Uncle Sam's work could be carried on.

Without venturing to guess the reason for it, I want to tell you that a Philadelphian has guided the destinies of the Post Office Department more often than a citizen of any other city. The first Postmaster General you gave to the country was your fellow townsman, Benjamin Franklin. Then there was Richard Bache, the largest of your early-day merchants; Timothy Pickering was the third. James Campbell, born here and living here practically all his life, was another Postmaster General.

Another famous Philadelphian in this post who made a famous record was your great merchant, John Wanamaker, who served under President Harrison in the early nineties.

Following the precedent of Franklin, the journalist, Charles Emory Smith, who conducted the Philadelphia Press for many years, was the Postmaster General under Presidents McKinley and Theodore Roosevelt.

The postal receipts have long been looked upon as a barometer of business conditions throughout the country. I found to my surprise shortly after taking office that while they were a good barometer they were some months late in registering the rise or fall of business. We have improved all that. A modern system has been installed and we now know on the 7th of each month the expenditures for the previous month. Our Comptroller has made continuous improvements in our accounting.

The improved system now enables me to tell you that for the first 10 months of this fiscal year there has been a gain in postal receipts of 10⅓ percent over last year in the smaller offices throughout the United States. The gain in the larger cities is approximately 6 percent over last year.

The Postal Service is on a paying basis now. In fact, there is an annual surplus where in the last year prior to the advent of the present administration we were running over $150,000,000 behind.

Whenever I have referred to this surplus I have been reminded by the critics of the present regime that I had not taken into account such expenditures as the air-mail subsidies and the ship subsidies. That is true; but neither did the $150,000,000 deficit take into account these items, which really have nothing to do with the Post Office beyond the fact that our Department is the disbursing agent of the Government of the large amounts ordered by Congress to build up aviation and the merchant marine. But in the actual business of handling and delivering the people's mail our income is greater than our expenditures, a state of affairs that the country has not witnessed since the administration of Woodrow Wilson. And the best part of it, from my point of view at least, is that we have sacrificed no essential service in effecting this saving.

I am happy to report that the present year—by which I mean the fiscal year ending June 30, 1935—promises to keep up the good report. April 1935, the tenth month of this fiscal year, records the best postal increase of any since April 1930, and only a million dollars below that year. That month's gain is nearly 15 percent over April 1934, which translated into dollars and cents means that April 1935 shows a gain in postal receipts over the same month last year of over $7,000,000. And the receipts for May, to date, show substantially the same corresponding increase over May of last year.

But it is not only the budget of the great, ramified Postal Service that has been balanced. For the normal current expenses of the entire Federal Government the Budget has been balanced as a result of economies in operation and substantial increases in collections by the Bureau of Internal Revenue. Extraordinary disbursements to assist our people to get work and to care for the destitute must be made, and these cannot be met each year. No one would expect them to be, as they are not current expenses.

I shall continue to advocate the use of every cent we receive in revenue over and above the costs of operating the service to be expended for the betterment of employees, through improved working conditions and shorter hours.

There are still many improvements to be made in working conditions, not only in the Postal Service but in private industry. They should be made so far as the Postal Service is concerned as rapidly as the condition of the country and the postal revenues permit. We should not conduct the Postal Service as a profit-making organization. Let us rather call it a public-service establishment. What we receive over and above our expenditures should be returned to the people in improved service, and to the employees in better salaries and shorter hours.

Incidentally, the erection of every post office such as this is a milestone that marks the Nation's path back to prosperity. There is no more accurate index to our economic progress or decline than the post-office figures. When business goes up, the postal activities and, therefore, the post-office revenues, increase. When business goes down, the post-office work declines in almost exact ratio. The present healthy situation of the budget of my department is a direct reflex of the improvement in business conditions. The index points to a vast improvement all along the line. I know, as you know, that for political and other reasons there is a constant clamor deprecating the advance that has been made. I have even heard a distinguished Senator or two of the opposition party deny the fact of any increase at all, or, if admitting the fact, insisting that the Government was in no way responsible for the betterment. The business men of Philadelphia know the facts. Indeed, the business men everywhere have only to consult their ledgers to mark the difference between the state of their affairs today and what they were 2 years ago. This country is getting along pretty well. We are not out of the woods, of course, yet, but we are well on our way. Not only does the substitution of black ink for red in drawing up the balance sheets emphasize the fact, but the contrast between the despair of the depression period and the hopefulness that now exists among our people tell the same story. The carloadings are up, the incomes reported by our taxpayers are up, more people are buying automobiles than ever before. In short, wherever you turn you see the flowering of our business plants. It is an economic spring, preceding the summer of content. And under the guidance of my great chief, President Franklin D. Roosevelt, I hope that you will feel assured that precautions are taken against any unseasonable frost to spoil the harvest.

INFLATION

Mr. BORAH. Mr. President, I ask to have inserted in the RECORD an editorial from the Philadelphia Record of May 21, 1935, on the subject of inflation.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Philadelphia Record of May 21, 1935]

THE BOGEY OF INFLATION

All the huffing and puffing of a thousand big bad wolves is but a zephyr compared with the bellowing of the Tories over inflation and the Patman bill.

It appears that some of the President's advisers, as stupid in politics as they are in economics, have induced him to make his veto message on the Patman bonus bill a grand denunciation of inflation—a magnificent reassurance to Tories throughout the land.

In other words, the reactionaries within the new deal are not nearly so much opposed to paying the soldiers their bonus as they are to paying it without the bankers also getting a bonus.

In view of this hue and cry, let us look again and see what inflation really is.

Consider the tires of an automobile. Putting air into them is inflation. Letting air out is deflation.

As an intelligent person, you know that if you put in too much air, you may burst the tire. You know also that if you do not put in enough air, you soon will ruin the tire.

You have got to have enough air in that tire so that it will run efficiently.

That is precisely the case with the money system of this country. If we pump in too much new money or credit, it is dangerous to economic stability. But if we do not put in enough to keep the credit system operating efficiently—it is even more dangerous.

Today the United States of America is running on an economic flat tire.

Twenty billions of our medium of exchange was destroyed in 4 years of deflation. There were no cries from the bankers then about the terrible dangers of deflation—which closed every bank in the country. There were no movements on in Congress to stop deflation at all costs.

But now, when it is proposed to pump back some of that destroyed credit so that our economic system can operate efficiently, the money changers yell "Inflation! Inflation! Inflation!"

That cry is just as absurd as it would be to oppose putting the right amount of air in a flat tire.

Money talks.

And it is the men of money who are making their money talk overtime in Washington today.

Why did these men of money make no objection whatever to deflation, even though it took the country to virtual ruin?

Because deflation increased the value of their dollars, made them richer in terms of the world's goods and services. As the

value of their money went up, the value of your labor and your goods went down.

In other words, deflation made the men of money more powerful.

And they know that inflation, which is the reverse process, will make them less powerful.

They know that just as deflation increased the value of their dollar credits, so inflation will decrease the value of their dollar credits. Their dollars will be worth less in terms of goods, labor, and services.

So the men of money today are making their money talk, louder than ever before, but damned stupidly.

They lacked foresight in 1929 to stop their own private credit inflation, which their bankers created to feed a speculative orgy. Subsequently they failed to realize that while deflation swelled the buying power of their dollars it was ruining the Nation which gave their dollars value.

Now they lack the foresight to recognize that without inflation, without a restoration of a good portion of our lost medium of exchange, we cannot regain prosperity and they cannot share in it.

For many years, the people of this country were fooled by the money changers, because the mechanics of our money system had become so complicated that they were difficult to understand, and few attempted to explain them to the man on the street.

That day is over. The man on the street knows now that inflation is not a nightmare, but simply an increase in the quantity of money or credit in our economic system. The man on the street knows that after twenty billions of our credit has been destroyed, it is absurd to talk about the restoration of two billions through the Patman bill, as dangerous, menacing, etc.

The man on the street has learned to distrust the yelp of "Wolf! Wolf!" from Wall Street.

He knows that yelp is a cry of fear from the money changers—not fear for the welfare of this Nation, but fear for their own wallets and the power of their own money hoards.

This Nation is in no more danger of reckless inflation, at this moment, from the Patman bill, than it is of inundation by lava from Mount Fujiyama.

FIXING OF GASOLINE PRICES IN INTRASTATE COMMERCE

Mr. BORAH. Mr. President, I ask to have printed in the RECORD a copy of a letter addressed to the Attorney General on the subject of oil in intrastate commerce, and a letter addressed to me by an attorney in Arizona, which I think may be of interest when we come to consider certain phases of legislation now pending.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

APRIL 13, 1935.

Hon. HOMER CUMMINGS,
Attorney General, Department of Justice,
Washington, D. C.

DEAR SIR: As attorney for several of the independent gasoline dealers in the State of Arizona, I have recently had occasion to seek the opinion of the United States attorney at San Francisco relative to the matter of price fixing under the National Recovery Act by the major oil companies in Arizona. In a letter under date of April 10, Robert L. McWilliams, first assistant, suggested that perhaps your office would feel at liberty to consider the matter of my complaint. I therefore address you for the purpose of making inquiry whether the Department of Justice takes the position that the oil companies may, under the National Industrial Recovery Act, agree among themselves to fix the price of gasoline after it has come to rest and is no longer a commodity of interstate commerce.

The several major oil companies doing business in this territory are operating under a decree of the Federal court entered in the Northern District of California, southern division, September 15, 1930. A Pacific coast petroleum agency agreement was prepared by the major companies about June 1934, conditioned that it should not become effective until proceedings were had in the case of *United States of America* v. *Standard Oil Co. et al.*, No. 2542-S in equity in said court. On June 30, 1934, United States attorney, the Honorable Henry H. McPike, on behalf of the Government, entered into a stipulation, the fourth clause of which reads as follows:

"Fourth. Without limiting or abridging the full force and effect of section 12 (a) of said refiners' agreement said section shall be construed as including the agreement of each of the parties not to permit gasoline, engine distillate or motor fuel, sold by it, or marketed by it indirectly, to be resold, at wholesale or retail, except for the same price for the identical product as such party manufacturing the same shall post for direct sale, whether such product be sold or resold without brand or under the same brand or under a different brand. Such posted price shall be an actual published price at which sales are being actually made in the open market and in regular course of business and free from collusion, collusive or fictitious nominal posting made or published for the purpose of defeating the foregoing provisions or the provisions of said section 12 (a)."

This same stipulation also provides that the parties shall conduct their operations so as to eliminate unfair competitive practices, prevent monopolies and monopolistic practices.

It is difficult to reconcile the fourth condition in the stipulation above quoted, with the provision providing that the company shall not engage in monopolistic practices. In fact, since the advent of the N. R. A. our State law has been overridden entirely, and the major oil companies who control the supply in this State not only fix the price at which the retailer must sell but enforce the law themselves by cutting off the supply of any dealer who refuses to sell at the price they establish and then, by reason of an agreement among themselves, no other company will sell such dealer gasoline.

It should be made clear, I think, that the dealers who are thus penalized have in no instance been guilty of violating any of the provisions of the code, except that of maintaining the price. In fact, competition is entirely destroyed in this State by price control. There is no fair competition. Conditions became so flagrant that the last legislature appointed a committee for the purpose of investigating whether the oil companies were violating our State antimonopoly law. After a hearing, a resolution was unanimously adopted directing the attorney general of the State to enforce the law of this State. There seems to be some hesitancy whether the Department of Justice takes the position that the National Industrial Recovery Act supersedes the constitution of our State in the matter of price fixing. An opinion from your office will clarify the matter.

The testimony taken at the hearing before the House investigating committee disclosed in one instance that the Federal California Administrator of the code of fair competition, acting on behalf of the Government, notified the major oil companies not to deliver gasoline in Arizona to a dealer who would not meet the price requirements fixed by the major companies. From the testimony taken before the House committee it appeared that the independent dealer thus cut off was not charged with violating any of the conditions of the code in the matter of wages or hours of labor or otherwise. It also appeared that he was buying a supply from the major companies and was netting 3 cents profit a gallon, and the major companies were insisting that he increase his price by 5 cents so as to enable him to make a larger profit per gallon. This practice has enabled the major oil companies to divert millions of dollars from our State alone during the operation of the N. R. A. by price fixing under the guise of "fair" competition.

Under rule 4 of article V of the code of fair competition, as promulgated by the President August 19, 1933, as modified September 13, 1933, the requirement is that a dealer must not sell for less than actual cost, plus expenses as therein enumerated. The major oil companies here take the position that the fourth clause in the stipulation above set forth abrogates rule 4 in the code of fair competition, and that they have a right to fix prices even after the intrastate character of the commodity is fixed.

I would appreciate your interpretation of this matter in reference to the right of major oil companies to collectively conspire to eliminate fair competition by refusing to sell gasoline to one who does not maintain the price fixed, and the right of the petroleum administrator in California to so order the companies, after the commodity becomes intrastate commerce.

Very respectfully,

R. G. LANGMADE.

PHOENIX, ARIZ., *May 22, 1935.*

Hon. WILLIAM E. BORAH,
Senate Office Building, Washington, D. C.

DEAR SENATOR: In the early part of April complaint was made to the Attorney General of the United States concerning the monopolistic practices by the major oil companies in Arizona. Under the guise of N. R. A. they engage in the practice of fixing prices at which retailers might sell gasoline.

There is a retail sales tax, payable to the State of Arizona, of 5 cents per gallon. We think we have a right to assume, after this tax is paid, that the commodity is intrastate commerce. The State would have no right to tax interstate commerce. After the State sales tax is paid, and after gasoline becomes intrastate, they govern the price at which it may be sold by refusing to supply dealers who do not maintain the price fixed.

This matter was investigated and reported upon by a committee of the house of representatives of our State, and a resolution was adopted in reference thereto. I enclose a copy of the action of the house of representatives, together with a copy of my letter to the Attorney General. He has not acknowledged nor advised me concerning my inquiry.

Respectfully,

R. G. LANGMADE.

GOVERNMENT GRADING OF TOBACCO

Mr. LOGAN. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Lexington Herald, the leading newspaper published in the city of Lexington, Ky., the title of the editorial being "A Service the Farmers Do Not Need Is Proposed in the Flannagan Bill."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Lexington (Ky.) Herald of May 22, 1935]

A SERVICE THE FARMERS DO NOT NEED IS PROPOSED IN THE FLANNAGAN BILL

Tobacco farmers as a rule are opposed to the Flannagan bill now pending in Congress, because it proposes the expenditure of a million dollars or more by the Government for something they neither need nor wish. Although it is proposed simply to grade tobacco for the benefit of the farmers and buyers, it is the belief

of the farmers that the bill really has for its purpose the eventual destruction of the open-auction system of marketing. This might be substituted by some kind of Government-controlled cooperative or other such method of selling. While the auction method is not perfect, the farmers of the Burley Belt feel that they do not wish to see it junked until a far more effective method of sale than has yet been proposed has been developed.

The bill, as originally drawn and later amended, provides for Government grading and inspection of all tobacco sold at auction anywhere in the country, the cost of the grading service to be placed on the Government and the grading to be inaugurated whenever farmers, by a referendum vote, express their willingness to submit to its features. The bill further gives to the Secretary of Agriculture the power to designate markets which will be permitted to sell tobacco at auction.

Tobacco farmers have a well-established reputation for asking in no uncertain terms for what they want and what they believe will be beneficial to their interests. When in 1921 they wanted a pool, they were heard throughout the entire territory and got their pool; when in 1926 they tired of the pool system and wanted it relegated to the scrap heap, they let their desires be known in no uncertain fashion and the pool broke up; when in 1933 they wanted a tobacco holiday declared because they felt it would later aid in the sale of their crop, they loudly asked for and received the sales holiday in every tobacco-producing State of importance in the country.

There has been no audible cry from the tobacco farmers either for a Government grading service or for any change in the present marketing system. The Flannagan bill calls for Government grading of tobacco. Supporters of the bill make much of the claim that tobacco can be graded. Of course it can. Tobacco has been graded ever since tobacco has been commercially marketed, and will continue to be so graded, but what is the need for telling a farmer his tobacco is a C2F or an X3L or a B4R when he already knows it as a certain quality lug, granulator, or leaf?

To say that farmers who have been producing tobacco for years, and whose forebears produced it for many years, need the advice of a Government expert when time comes to grade their production is unfair to the producers of one of the most highly specialized crops produced in the United States. As Judge Henry Prewitt, of Montgomery County, said in effect before a House committee at a hearing on the Flannagan bill last winter: "If you'll spend your time and your money telling us how we can keep the bugs off our plants in the summertime, we'll grade it ourselves in the winter."

It is argued by those supporting the bill that cotton is graded and wheat is graded, and so tobacco, too, should be graded. And tobacco is graded. Who is there in Kentucky or any other tobacco-producing State, who has not heard of flyings, trash, lugs, bright, red, and tips? Cotton is graded by length and wheat by weight, but tobacco can be graded by neither.

Farmers grade their tobacco by seven general classifications, and these seven classifications—flyings, trash, lugs, bright leaf, red leaf, tips, and damaged and nondescript—fit the producers' convenience and purpose far better than any alphabetical-numerical arrangement that can be devised. Can you imagine a farmer asking his neighbor, "John, how much did you get for your X2F?"

Nor is there any more logic in the contention that Government grading will aid farmers in knowing when and what to reject. If anything, Goernment grades will only make him even more confused than the Flannagan bill advocates now contend he is. What better guide to rejections could a producer ask than the privilege to compare the price paid for a basket from his crop with a basket the same purchaser paid for the identical grade from his neighbor's crop?

Tobacco farmers have no need whatever for Government grading. They already know vastly more about tobacco and tobacco grades than do those who are trying to push the Flannagan bill through Congress. They do not want the Government to go too far in controlling what they do.

AUTHORIZATION OF CERTAIN PUBLIC-WORKS PROJECTS

Mr. SMITH obtained the floor.

Mr. JOHNSON. Mr. President, I ask the Senator from South Carolina to yield to me for the purpose of having considered an emergency measure which will require neither debate nor time, but will enable us to pass, I hope, Senate bill 2811, being Calendar No. 678, designed to correct what has transpired because of the decision which was rendered in the case of the United States against Arizona.

I have consulted with the Senators from Arizona in respect to the matter. They have an amendment which they have prepared and which I am willing to accept, which I will send to the desk, if I am permitted to have the bill considered.

The VICE PRESIDENT. Does the Senator from South Carolina yield for that purpose?

Mr. SMITH. I yield, Mr. President, for that purpose, but if it is going to lead to any debate, of course, I should like to proceed with the pending unfinished business.

The VICE PRESIDENT. Is there objection to the consideration of the bill referred to by the Senator from California?

There being no objection, the Senate proceeded to consider the bill (S. 2811) to authorize and adopt certain Public Works projects for controlling floods, improving navigation, regulating the flow of certain streams in the United States, and for other purposes, which was read, as follows:

Be it enacted, etc., That for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as "Parker Dam" on the Colorado River and "Grand Coulee Dam" on the Columbia River are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts, including contracts amendatory of or supplemental to those hereby validated and ratified.

SEC. 2. All projects planned or undertaken to accomplish the purposes specified in section 1 for which allotments have been made pursuant to the provisions of title II of the act approved June 16, 1933, entitled the "National Industrial Recovery Act", are hereby authorized and adopted, and all contracts and agreements which have heretofore been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts, including contracts amendatory of or supplemental to those hereby validated and ratified.

Mr. JOHNSON. I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 2, after line 24, it is proposed to add a new section, as follows:

SEC. 3. For the purposes specified in section 1, the Secretary of the Interior is authorized to construct a dam in and across the Colorado River at or near Headgate Rock, Ariz., and structures, canals, and incidental works necessary in connection therewith.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. KING. Mr. President, I should be very glad to have the Senator from California explain the terms of the bill and its purpose, for the reason that, as the Senator knows, not only my State but the upper Colorado River Basin States are vitally interested in the waters of the Colorado River, and if this bill affects in any way the rights of the upper States in the waters of the Colorado River, I certainly should not favor its consideration.

Mr. JOHNSON. In a word, I think I can make plain what the bill proposes. It has no such purpose, no such intent, and accomplishes no such design as that suggested by the Senator from Utah. The bill is intended to permit the work to proceed on what are known as "Parker Dam" on the Colorado River and the "Grand Coulee Dam" on the Columbia River and construction of a like character where the decision in the case of United States against Arizona stopped the work. It is an emergency measure to which I think there can be no objection whatsoever.

Mr. KING. May I ask the Senator why, in the light of the decision to which he refers, namely, the Arizona case, it is deemed necessary to include other dams or prospective dams on other streams?

Mr. JOHNSON. Because there may be others similarly situated.

Mr. ROBINSON. I understand that the work has been suspended or discontinued on these dams for the present?

Mr. JOHNSON. Exactly.

Mr. ROBINSON. And that the passage of the measure is necessary in order that operations may be resumed?

Mr. JOHNSON. That is it exactly.

Mr. WHEELER. Mr. President, may I ask the Senator from California whether or not the bill includes also the Fort Peck Dam in Montana?

Mr. JOHNSON. Only in general language, relating to projects under the Recovery Act.

Mr. WHEELER. The reason I asked the question was because of the fact that my understanding is that a suit has recently been started in the courts of Montana for the purpose of holding up that work, the contention being that the Government was without authority to go ahead to build that dam.

Mr. JOHNSON. This bill, if enacted, will cure that situation if the Montana project comes within its purview.

Mr. KING. Mr. President, may I inquire of the Senator whether the terms of this bill are so broad as that authority may be expressly or impliedly considered to have been granted by it to construct dams and reservoirs upon any stream in the United States?

Mr. JOHNSON. That is not the objective of the bill at all. It is intended to validate those projects where the decision referred to has interfered with the continuance of the work.

Mr. KING. Does the Senator believe that it does not operate in futuro and does not comprehend all streams which in the future may be regarded by the Federal Government as worthy of consideration and upon which the Federal Government may desire to construct dams and reservoirs? I would object, I will say very frankly to the Senator, to granting plenary authority to the Federal Government or the Department of the Interior or any other department to enter upon the streams of the United States at any time or at any place where they may desire without a special grant of Congress. If this is a general bill designed not only to validate past trespasses, if we may call them trespasses, but to grant prospective rights for invasion of the streams or to enter upon streams for the construction of reservoirs, I am opposed to it.

Mr. JOHNSON. It validates the constructions which have been undertaken.

Mr. KING. If the Senator is sure it is limited to that purpose, I shall make no objection. I do not approve of that policy, I will say frankly; but I shall not object to consideration of the bill if it is limited to that purpose.

Mr. JOHNSON. Let us read it and see exactly what it does. It reads as follows:

That for the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations, and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as "Parker Dam" on the Colorado River and "Grand Coulee Dam" on the Columbia River are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts, including contracts amendatory of or supplemental to those hereby validated and ratified.

SEC. 2. All projects planned or undertaken to accomplish the purposes specified in section 1 for which allotments have been made pursuant to the provisions of title II of the act approved June 16, 1933, entitled the "National Industrial Recovery Act", are hereby authorized and adopted, and all contracts and agreements which have heretofore been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts, including contracts amendatory of or supplemental to those hereby validated and ratified.

That is the language of the bill. It is perfectly plain, and the Senator can understand it perhaps even better than can I.

Mr. KING. I have never seen the bill and did not know it was to be presented for consideration. As a matter of fact, I did not know that such a bill was under consideration. As I have said, if it is limited only to those projects to which reference has been made, as explained by the Senator, I shall not object, although I am not in favor of the bill.

The VICE PRESIDENT. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

AGRICULTURAL ADJUSTMENT ADMINISTRATION

The Senate resumed the consideration of the bill (S. 1807) to amend the Agricultural Adjustment Act, and for other purposes.

The VICE PRESIDENT. The question is on the amendment in the nature of a substitute offered by the Senator from South Carolina [Mr. SMITH].

Mr. SMITH. Mr. President, the amendment in the nature of a substitute which I have offered is to the original law. I presume Senators are familiar with the law as well as with the amendments proposed thereto. I have offered the text of the House bill in the form of an amendment in the nature of a substitute for the Senate bill.

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from South Carolina yield to the Senator from Nebraska?

Mr. SMITH. I yield.

Mr. NORRIS. As the Senator knows, I am familiar with the Senate bill, but I am not familiar with the text of the House bill. I am wondering what the parliamentary situation will be if we adopt the text of the House bill, and what will be the effect on the proposed amendments recommended by the Committee on Agriculture and Forestry. Are they about the same?

Mr. SMITH. In my opinion, the text of the House bill is an improvement over the Senate committee proposal. I took occasion to interview the departments and they acquiesced in the House text.

Mr. NORRIS. I am glad to have that statement.

Mr. SMITH. Mr. President, there has been considerable comment in the press as to my attitude as chairman of the committee toward the amendments and much speculation as to my attitude not only toward those amendments but as to the law itself which the amendments are supposed to implement.

The attempt on the part of the administration to have enacted this legislation and to put it into operation is not in its essential features an emergency proposition. It is an attempt to do that which has been tried to be accomplished from time immemorial—namely, to provide some means by which the disorganized farmers may be made the recipients of a just proportion of the wealth which they produce.

The diversity of their financial standing, their mental equipment, their varied personalities, the difference in the things they produce, make it impossible for the farmers to organize. They never have organized. In the very nature of the case they cannot organize in the sense that industry organizes or in the sense that labor organizes. They are so widely scattered, so occupied individually, so segregated from their fellows, employ such varied equipment, and work under such differing conditions that it is impossible for them to organize.

A representative of one of the great packing houses came before our committee. He took up these amendments and discussed them; and I must say that in my opinion he was intellectually honest. He displayed intellectual integrity in discussing the amendments. From his standpoint as a packer, he had just cause to criticize the restrictions implied in the licensing feature and in the marketing agreements of the farmer. After he had argued the question and the amendments which pertained to his business he wound up by saying that when everything was said and done the law of supply and demand ultimately controlled the market.

I said to him, "I do not intend to question the operation of the law of supply and demand. Ultimately, it exacts its sanction"; but I asked him if he had considered the law of least resistance. I said, "You equip your plant. You invest your capital. You hire your employees and your technicians, such as you use. You calculate the finished product, the output of your plant, and what you must sell the finished units for in order to bring in a return sufficient to take care of obsolescence, pay dividends on your stock, and meet your financial obligations; and you find sales resistance which upsets your calculations, and there has to be a readjustment. Do you lessen the wages of your employees? No.

Do you lessen the salary you are paid as a technician? No. Do you lessen any of the fixed charges? No; you lessen the price of the finished product you sell, and you march through the back door and recoup out of the man who produces the livestock. You know you do that. It is the line of least resistance; and not only that but because of the inventive genius of this country you have been able to convert a product which is perishable in the hands of the cattle raiser so that it becomes imperishable when processed by you.

"The cattle raiser is subject not only to the law of least resistance but to the law of increasing and diminishing returns. When the cattle and the hog reach a certain stage, if not marketed they become corpses, and there is subtracted from their value a certain amount each day. Therefore, under that natural law, and also under the law of his disorganized condition, the cattle raiser is compelled to sell at your price. He is hedged about by the law of increasing and diminishing returns, the perishable nature of his product, and the law of least resistance."

Mr. President, I have studied this bill and these amendments. This may be a crude attempt, but it is an attempt on the part of the Government, in behalf of those who feed us and those who produce the raw material out of which we are clothed, to create some resistance in the markets in favor of the producer of the raw material.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from South Carolina yield to the Senator from Idaho?

Mr. SMITH. I yield.

Mr. BORAH. Will the Senator explain more in detail the difference between the original bill and the substitute?

Mr. SMITH. Does the Senator mean the original House bill or the Senate bill?

Mr. BORAH. I mean the Senate bill.

Mr. SMITH. The difference between the Senate bill and the amendment now pending?

Mr. BORAH. Yes; what are the changes?

Mr. SMITH. Mr. President, I thought I would explain that after stating my attitude toward these amendments. There are some of them which I think perhaps could be bettered by being amended; but I desire to state to the Senate that we have no right to fail to attempt to aid the producer of the raw material, who has no voice in fixing the price of the commodity he sells and no voice in fixing the price of the articles he buys.

We tried the Farm Board. It failed, not because the law itself was not a splendid piece of legislation, but because of its administration, and because of attacks from outsiders with whose business it interfered. For my part, I thought it was incumbent on me, as chairman of the committee, to state that I think it is our duty to make these marketing agreements enforceable by law, if carried out in justice and in fairness, and to restrict the exploitation of the producer of the raw material by organized industry.

There are some provisions in this measure which perhaps need modification; but I desire to state here and now that in the present state of our organized society it is not fair to leave the millions of those who produce raw material wholly at the mercy of those who process it for the benefit of the consumer; and the House provisions, modified as they are, I think are preferable to the Senate provisions.

In answer to the Senator from Idaho, I will now read the different sections and state how they differ from the provisions of the Senate bill.

Mr. KING. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. KING. Some of us perhaps have forgotten—at least, I have forgotten—the important provisions of the act to which this measure is supplemental. Before proceeding to the course just indicated, will the Senator state in a few words, or as many words as he desires, the nature of the amendments and the difference between the original act and the pending measure, and the additional powers which are sought to be conferred upon bureaucrats, as found in the new bill?

Mr. SMITH. Mr. President, in reply to the Senator from Utah let me state that I do not consider that any additional power is granted by these amendments. I will read the amendments as they occur in the text of the House bill and as they are related to the organic law. I will take them up in their order and read them, so that anyone having the original law and the amendments may understand how the House amendments differ from the Senate amendments, and how they modify the existing law.

Mr. BORAH. Mr. President, did I understand the Senator to say that these amendments confer no powers additional to those granted by the original law?

Mr. SMITH. Practically none at all.

Mr. BORAH. I wish the Senator would amplify that statement.

Mr. SMITH. Very well; I will.

Mr. McNARY. Mr. President——

Mr. SMITH. I yield to the Senator from Oregon.

Mr. McNARY. I have experienced some difficulty in the study of the House bill which has been offered as a substitute for the Senate amendments. The House bill is very complicated in comparison to the original act and the recent Senate bill proposing amendments. It refers to sections, subsections, paragraphs, and clauses to an extent which I find it very difficult to follow.

I am not so much interested in the Senate proposal, because I understand that in the present parliamentary situation that is eliminated, and so we have no reason to think about the amendments which the Senator from South Carolina reported from the Senate committee. What I am interested in is the effect the House amendments have upon the original law in the matter of its modification, alteration, or change.

I wish the Senator would arrange to have the original act printed in parallel columns with the House amendments, so that we could take up these sections, subsections, subdivisions, paragraphs, and clauses, and, by comparison, see just what we are doing in the way of changing the original act by this bill.

I was struck by the statement made by the Senator from South Carolina in response to an inquiry by the Senator from Idaho, that this bill of a dozen pages does not in any way modify the organic law.

Mr. SMITH. I did not say it did not modify it. I do not think it appreciably increases the power of the Secretary of Agriculture.

Mr. McNARY. Does it decrease the power of the Secretary?

Mr. SMITH. In some respects it does.

Mr. BORAH. Let us have information as to those respects.

Mr. SMITH. Very well; I will come to that in due time.

Mr. McNARY. Mr. President, I have no desire to obstruct or delay legislation. I am very anxious, as I think my whole attitude has shown, to terminate the session as quickly as possible. However, I like to legislate intelligently, and would it not be an intelligent thing to have the organic law printed in one column and the House amendment in another, so that we may at a glance know just what we are doing?

Mr. SMITH. I shall attempt, in the résumé of the proposed amendments I am about to present, to refer to the original law, so that as I come to each paragraph the provision of the original law may be read in connection with it. It is not as complicated as the Senator seems to suggest. There are a great many subdivisions and divisions lettered and numbered, and it is a little tedious; but, when we actually get down to it, it is not so very difficult to understand.

Mr. McNARY. Has the Senator prepared notes in order to carry out what he has just stated he would do, namely, give a comparison of the amendments with the present law?

Mr. SMITH. That is what I am trying now to do.

Mr. FLETCHER. Mr. President, let me ask a question as to the parliamentary situation. I understood on Friday that the Senator moved to substitute the House bill for the Senate committee bill.

Mr. SMITH. Yes.

Mr. FLETCHER. Is that motion still pending?

Mr. SMITH. The motion is still pending, and I am addressing myself to the motion.

Mr. FLETCHER. I think the Senator ought to have a chance to proceed.

Mr. SMITH. I desire to proceed. Let us take the first amendment. Section 1, subdivision (a) of House bill 8052 does not appear in our bill, but that is neither here nor there. It is a part of the so-called "Shipstead amendment." The Senator from Minnesota would alter the method of calculating the parity price and increase the rate of processing taxes so as to take account of increased interest payments on farm indebtedness and increased tax payments on farm real estate. This amendment may be considered to raise parity standards by approximately 5 percent.

The Senator from Minnesota [Mr. SHIPSTEAD] called the attention of the Department and of the Senate committee to the fact that in fixing parity prices they had not considered the interest the farmer had to pay on mortgage indebtedness or his taxes, and therefore, when they were figuring up his costs those elements of cost should be included in determining the parity price. I do not think anyone would object to that.

Mr. McNARY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from South Carolina yield to the Senator from Oregon?

Mr. SMITH. I yield.

Mr. McNARY. Is the Senator now reading from the language found on page 1, lines 4 to 10, inclusive?

Mr. SMITH. If the Senator will turn to House bill 8052, page 1, beginning with line 3, he will find this language:

> That (a) the first sentence of subsection (1) of section 2 of the Agricultural Adjustment Act, as amended, is amended by inserting before the period at the end thereof a semicolon and the following: "and in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments, and tax payments during the base period."

Mr. McNARY. Will not the Senator illustrate that proposition?

Mr. SMITH. The Senator from Minnesota came before the committee and said that in calculating the parity price there had been left out the amount farmers had to pay in the form of interest during the base period when their real estate was mortgaged, and the amount of taxes; that those elements of their expense had been left out of the calculation of the parity price.

Mr. McNARY. Would that affect the general principle of payment of interest and taxes, or would it apply solely to each specific farmer?

Mr. SMITH. It would apply to the general parity price. The average of such expenses in the form of interest on mortgages and taxes is easily ascertainable for each section of the country.

Mr. McNARY. Suppose one farmer carried indebtedness on his farm of $10,000 and another indebtedness of $3,000. Would the one having a mortgage on his place of $10,000 receive larger processing taxes than the one with the $3,000 mortgage?

Mr. SMITH. Oh, no.

Mr. McNARY. I want to know how it would work.

Mr. SMITH. It would be impossible to follow out each one; but in calculating the price current for the thing the farmer sold, whether wheat or cotton or hogs, the amount of taxes paid would be estimated in the parity price. It may cost me more to raise wheat than it costs my neighbor, and may cost me more to raise cotton than it costs my neighbor, but the parity price is uniform. We could not pass a law which would adjust itself to the varying and incidental costs of production.

Mr. McNARY. This is what I have in mind. When we considered the original Agricultural Adjustment Act it was provided that the parity price should be the difference between the current market price and the base period price, the base period being 1909 to 1914.

Mr. SMITH. That is correct.

Mr. McNARY. Now, the Senator has introduced another factor, namely, what does this person or that pay in the way of interest and taxes?

Mr. SMITH. But the Senator mistakes the object of having a parity price fixed. The original law provided that the return to the farmer should be equal to what he had to pay. We left out what he has to pay in the form of taxes and in the form of interest, and therefore we have incorporated those costs, just as we incorporated the average price he had to pay during the base period.

Mr. McNARY. Perhaps I do not make myself clear. In the old law, with which I am conversant, it was provided that the parity price should be reached by figuring the base period price and the current market price, the two things wholly discoverable at any particular time.

Mr. SMITH. Yes.

Mr. McNARY. Now the Senator has introduced another factor, taking into the calculation interest and taxes. Do the interest and taxes apply to each farmer, or to a group of farmers, and how are the facts ascertained?

Mr. SMITH. In fixing the basic price and the current price there was calculated so much for wheat and so much a pound for cotton as a just return base in the particular period, the average price the farmer received, but the parity price during that period was not made high enough to take care of the various factors which were pointed out by the Senator from Minnesota.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. ROBINSON. The difficulty which arises under this amendment is involved in the calculation which the Department will necessarily have to make in order to arrive at what constitutes the tax and what constitutes the interest payments which must be taken into consideraion in fixing the parity price. Manifestly it would be impossible to consider the tax paid by each individual farmer and the interest paid by each individual farmer, because some farmers pay no interest whatever and some lands are taxed very much higher than are other lands.

Mr. SMITH. Certainly.

Mr. ROBINSON. So that there is involved a complicated problem of arriving at an average.

Mr. KING. Mr. President, will the Senator yield?

Mr. SMITH. I will yield in a moment, but before I yield I read from the report of the House committee, where it is said:

> The present method of calculation is composed of an index of prices of goods which farmers buy in relation to the pre-war level and does not cover expenditures for taxes and for debt service. At the present time taxes per acre and mortgage interest per acre are probably about 160 to 170 percent of the pre-war level.

As the Senator from Arkansas has said, it would be impossible to go into each individual case, but it would be necessary to arrive at an aggregate; and then, in whatever benefit payments made it would be necessary to figure the total the farmer must pay and use that in determining the price the Department is attempting to get for him.

Mr. KING. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. KING. I think the statement made by the able Senator from Arkansas removes some of the uncertainty which has existed in my mind; but, in order that I may be assured, may I invite attention to a situation which perhaps, by concrete example, may clarify the matter?

Take, for instance, the State of Pennsylvania. I am somewhat familiar with farmers there. Most of the farmers there have no obligations whatever upon their property. Perhaps only 40 percent of the farms in the United States are mortgaged. Assume for the purpose of my illustration that the farmers in the State of Pennsylvania have no mortgages at all, and their taxes are lighter than are those paid by farmers in the State of New York or in the State of South

Carolina. Are we to lump together all the interest charges upon all the farmers who have mortgages upon their farms—all the interest which they have to pay—and then, assuming those charges amount to, say, a billion dollars, raise the parity price $1,000,000,000, and give the farmers of Pennsylvania or any State where they have no indebtedness and where they have light taxes the benefits by reason of throwing into one pot all the indebtedness of farmers throughout the United States?

Mr. SMITH. The Senator from Utah is too good a lawyer to question the fact that we cannot legislate for exceptions. We have to have general rules, and there are always inequalities under any of them. According to the terms of this bill, the processing tax on wheat applies to the wheat grower, on cotton to the cotton grower, and so forth. It is not a processing tax for the benefit of all the farmers, but a processing tax, or an adjusted compensation, if I may use that obnoxious word in this body, for the farmers in the regions in which a given commodity is produced. There is one processing tax applicable to wheat, one to hogs, one to each of the basic commodities, but they are applied according to the pre-war base parity.

Mr. KING. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. KING. Then, if I understand the Senator—and I agree with him that we cannot legislate to meet exceptions—the bill does mean, however, that those farmers who have no indebtedness, who have no interest to pay, who have light taxes, are going to receive the benefits which result from the augmentation of the aggregate amount which goes to establish the basic price.

Mr. SMITH. Does the Senator think they will seriously object?

Mr. KING. No; they will not, of course; but does the Senator think that is fair and just?

Mr. SMITH. I think it is as fair and just as it can be made.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. ROBINSON. What will probably happen will be that a tax level compared with the basic period tax level will be arrived at, and an interest level will be arrived at comparable with the pre-war or basic period level; and no effort, of course, will be made to work out a tax level based on the amount that each individual farmer pays. That would be impossible. An index figure will be arrived at. It will not be accurate, but it will be approximately accurate.

Mr. SMITH. I call the attention of Senators to the fact that a going concern does not pay taxes; it simply charges them to the consumer. It does not pay interest; it charges it to the consumer. Every Senator knows that the farmers of this country pay the interest and pay the taxes. There is nobody below them to whom they can pass the buck. This bill is an attempt to incorporate into the agricultural program some plan by which the taxes which the farmer pays, and the interest which he pays, shall be shared by those for whom he produces the raw material.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. GEORGE. I should like to ask a question, because this bill is a very important one, and it is important to understand it.

Under the provisions of the bill it is simply intended to give to the Secretary of Agriculture the power to increase the parity price. Is not that all?

Mr. SMITH. That is all.

Mr. GEORGE. In other words, it is an additional amount between the fair market or the market value and the parity price, as fixed in the original act by which the Secretary of Agriculture would be empowered to increase the amount of the tax which he may impose upon the product?

Mr. SMITH. That is right.

Mr. McNARY. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. McNARY. The Senator from Georgia has made no new discovery. That is patent on the face of the bill. I am questioning the practicability and workability of the provision. I wish to know what the mechanics is. I do not desire to see anything in this bill which will complicate its operation or embarrass its administration. Of course, we know what the purpose is.

Mr. SMITH. The purpose is to increase the parity price of each commodity in accordance with the average interest and taxes the farmers paid during the base period.

Mr. McNARY. That is very, very simple indeed; but the Senator has not as yet explained how it is going to be worked out, or whether it is practicable. We have not as yet had any analysis of it at all. It is very easy to make a general statement of that kind, but how is it going to be done? I should like to have the Senator give an illustration.

Mr. SMITH. Suppose the parity price of wheat should be determined at 98 cents a bushel, but that figure should be found not to be adequate because it did not take care of the items of expense, and the parity price should be 98½ cents or 98¼ cents. That is an illustration of how it would work.

Mr. McNARY. Take the case of a man who has a farm without any mortgage on it, whose taxes are lower than those of a farmer in another community. Is it fair to give him a greater benefit than in the case of the man who has a mortgage on his farm, and a higher tax to pay?

Mr. SMITH. The only way I can answer that question is to answer it as I answered the question of the Senator from Utah [Mr. KING]. Such cases are so infinitesimally few that the Senator need not concern himself with them.

Mr. McNARY. That may be so in South Carolina.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. SHIPSTEAD. In the original Agricultural Adjustment Act there was written into the bill the formula to be followed in determining the parity of the agricultural dollar with the industrial dollar, with the objective in view of getting those two dollars as near together as could be done to achieve the relation which existed from 1909 to 1914. Certain factors were to be taken into consideration in figuring out the parity. Those factors were enumerated in the bill. After the bill had been passed, in a meeting of the Agricultural Committee the fact was called to the attention of the Secretary of Agriculture that there had been a change in two items in the cost of production of agricultural commodities—the greatly increased amount of mortgages on farm lands and the greatly increased taxes. These two items had not been included in the category of factors which were to be taken into consideration.

When that point was called to the attention of the Secretary, he said in the committee—and it is a matter of record—that he thought the omission of those two items was a mistake. He said they should have been included.

As a result of that testimony, we adopted an amendment substantially identical with the first section of the pending bill. The amendment was agreed to unanimously in both the House and the Senate a year ago. However, the President was advised that it was tax legislation, and, being a Senate bill, he felt compelled to veto it. The question now arises in my mind, if we should pass this bill as a Senate bill, should we not meet that objection again?

Mr. SMITH. We are now considering the House bill.

Mr. SHIPSTEAD. The House bill is now before us?

Mr. NORRIS. That is the one we are considering.

Mr. SHIPSTEAD. I thought this was a separate amendment. I was called from the Chamber when the discussion began, and I did not hear what has taken place.

Mr. SMITH. Now, Mr. President, I desire to take up the next amendment.

Mr. GORE. Mr. President——

The PRESIDING OFFICER (Mr. MINTON in the chair). Does the Senator from South Carolina yield to the Senator from Oklahoma?

Mr. SMITH. I yield.

Mr. GORE. There is one point I should like to have the Senator clear up for my benefit.

The Senator from Arkansas [Mr. ROBINSON] stated that under the proposed measure a new tax rate would be worked out as compared with or as contrasted with the tax rate which prevailed during the base period. Taxes undoubtedly have increased, and I can see some point in that suggestion; but interest rates are lower now than they were during the base period 1909 to 1914, each year of which was prior to the establishment of the Federal land-bank system. During that period interest rates were much higher than they are now. So I do not quite see the point of including the item of interest in this provision when interest rates now are less than they were then.

Mr. SMITH. I presume those who calculate the tax will give due consideration to what extra burden has been placed upon the farmer. If it appears that the interest rate is lower, of course, that will not be included, but in case it is higher it will be included. If taxes are higher and are an increased burden, that question will be considered.

Mr. ROBINSON. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. ROBINSON. It is probably true, as I was just about to state, that the prevailing interest rate is lower now than it was during the base period, but it is also true that the aggregate amount of the indebtedness has increased since the base period, and, as I said before, it will involve a somewhat complex computation; but an interest-payment level may be arrived at in the nature of an index figure showing the amount of interest that is paid as compared with that which was paid during the base period.

I must recognize the difficulties that inhere in a computation of that nature. Nevertheless, it is practicable to work it out to comparative accuracy. If the total effect of the computation respecting interest is to reduce the level as compared with the prewar period constituting the base period, the processing tax would be reduced thereby. On the other hand, it would be increased by the new tax level which is arrived at in comparison with the prewar tax level or the base period tax level. No one can tell exactly what the total net result would be as affecting the processing tax; but the question that is to be determined by the Senate is whether these elements, taxes and interest paid on farm mortgages, are fairly to be taken into consideration in arriving at the parity price.

Mr. SMITH. That is all.

Mr. ROBINSON. That is the question.

Mr. GORE. That is the point I was trying to develop. The Senator from Arkansas in his first statement said it was a question of arriving at a new rate as compared——

Mr. ROBINSON. Not necessarily a rate, but a tax level.

Mr. GORE. I think the Senator used the word "rate."

Mr. ROBINSON. No; I did not; I used the words "tax level." It would involve, of course, a comparison of interest rates and tax rates.

Mr. GORE. What I was trying to get at was whether it was a question of rates or levels now as compared to the base period or whether it is a question of the total interest burden borne by the farmers in general now as compared with the burden borne by the farmers in the base period.

Mr. SMITH. I think the whole question, Mr. President, was expressed by the Senator from Arkansas, for it is obvious that if the farmer's dollar is to be on a parity with the dollar of industry, and it is found that the charge for taxes—let us use that as an illustration—is now so much greater than it was during the base period that when subtracted from his income it reduces the purchasing power of his dollar, that factor should be computed in the arriving at parity price.

Mr. GEORGE. In other words, Mr. President, if I understand correctly, the Secretary of Agriculture is of the opinion that the provision in the original act was not sufficiently broad to include the taxes paid as articles which the farmer must buy. Now it is proposed to add to the articles which the farmer must buy in arriving at the parity price the items of interest and taxes.

Mr. SMITH. Which he purchases just as he purchases any other goods.

Mr. GORE. Mr. President, undoubtedly the interest rate is less now than it was during the base period, but the mortgage indebtedness is greater now than it was during the base period. Forty-two percent of the farmers now have their farms mortgaged, according to the last census, while 58 percent of the farmers do not have their farms mortgaged. Would not this element included in the pending amendment operate as a bounty to the 58 percent of farmers who have no mortgage indebtedness at all?

Mr. SMITH. It might, but what are we going to do with the 48 percent who are about to pass out?

Mr. GORE. That is the point I want to get at; namely, if there is some way to take care of the farmers who are entitled to it. Assuming that the element referred to ought to be included at all, is there any way to accomplish that result?

Mr. SMITH. That is getting back to the share-the-wealth plan of the Senator from Louisiana [Mr. LONG]; that is bringing us all down to the same level.

Mr. GORE. Perhaps that is so.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Minnesota?

Mr. SMITH. I yield.

Mr. SHIPSTEAD. As I understand, only part of the taxes and interest taken into consideration in calculating the parity of the agricultural dollar is the increase, if any, in those items.

Mr. SMITH. Over the base period.

Mr. SHIPSTEAD. Yes; over the base period.

Mr. SMITH. That is correct.

Mr. SHIPSTEAD. I wonder if this thought does not apply, for instance, in the case of cotton: Referring to the difficulty of some farms being mortgaged and others not being mortgaged; take, for instance, the benefit payments paid for reduction of acreage in the case of cotton. Some acres are not so fertile as others; some land may produce a bale per acre while it may require 2 or 3 acres of other land to produce a bale; but the farmers are paid the same price. It might be said that that is paying a bounty to the farmer who is a poor farmer, who has poor land, and raises an inferior grade of cotton; but in order to have uniformity of legislation they are all paid the same price per acre for retiring acreage. Of course, the man who is a poor farmer and has very poor land, if he gets as much per acre for such land as the man who has kept his farm in fertile condition and is a good farmer and raises good cotton, it might be said that that places a penalty upon the good farmer; but in order to have uniformity of legislation or in order to have any legislation at all, it seems to me that those things cannot be taken into consideration if we are going to have this kind of legislation.

Mr. SMITH. I may say, by way of explanation to the Senator, that when they are estimating the benefit payments the farmer indicates his production per acre, and they pay him the same price per pound as is paid to others; so that the difference in value of the land productivity is taken care of, because there is a uniformity in the price per pound, and they ascertain how many pounds the farmer has made on a given acre.

Mr. ADAMS. Mr. President——

Mr. SMITH. I yield to the Senator from Colorado.

Mr. ADAMS. I desire to make an inquiry to ascertain if I understand the amendment correctly. As I read it, it is proposed to distribute the aggregate interest payments of all the farmers over the entire area of the productive land, regardless of whether the farms are mortgaged or not. In other words, it is not based upon the rate of interest; it is not based upon the total amount; but it is designed to reflect the current interest payment per acre. In other words, if today 42 percent of the farms are mortgaged and 30 percent were mortgaged at the base period, the problem will be worked out upon the aggregate payment of interest, regardless of the rate, distributed over the entire farming area, because what it is sought to ascertain is a basis; that is, a certain unit of a farm commodity in 1909 would purchase a certain quantity

of those things which the farmer bought, and it is desired to give to him today the same purchasing power for that unit which he produces. It is figured that the farmers' aggregate payments of interest and taxes—that is, of all farmers—have reduced to a certain extent today his unit purchasing power, and the effort is being made to correct that deficiency in purchasing power.

Mr. SMITH. Yes; that is all.

Mr. FLETCHER. Mr. President——

Mr. SMITH. I yield to the Senator from Florida.

Mr. FLETCHER. Mr. President, I think there is a great deal of force in the suggestion made by the Senator from Oklahoma [Mr. GORE]. In the base period the interest rate paid by the farmers of the country was all the way from 8 to 20 percent. When the Farm Loan Act was passed in the year 1916 the interest rate became from 4½ to 5 percent. It was estimated at that time that the farmers of the country would save $450,000,000 a year in interest alone after the passage of that act. So after 1916 the farmer has been paying much less interest than he paid prior to that time, even though his mortgages have increased. I doubt very much if he would benefit by the arrangement planned in this bill.

Mr. SMITH. Mr. President, that suggestion answers itself; because if in calculating the difference between what the farmer had to pay during the base period in buying interest the Department found that the rate was higher then than now, it would be left out; but in the case of taxes, if it is found that the farmer is paying more then than now, in order to equalize his dollar with the dollar during that period, that extra expense must be taken into consideration.

Mr. GORE. Mr. President——

Mr. SMITH. I yield to the Senator from Oklahoma.

Mr. GORE. I think the explanation given by the Senator from Minnesota is not quite in accordance with the practice of the Department. He stated, in order to secure uniformity of rental payments, that the farmer who had poor land was paid as much as the farmer who had good land, notwithstanding the difference between the quality of the land; that, in the interest of uniformity, equal payments were made. I do not understand that to be the rule or the practice.

Mr. SMITH. It is not.

Mr. GORE. The production records of each tract of land are taken into account, and benefits or rental payments are based on those records, the rule being one of equity rather than of uniformity, I should say.

Mr. SMITH. The facts are easily ascertainable.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. SHIPSTEAD. I am glad to be corrected as to the error. I assumed that benefit payments for cotton land were made according to the region where the crop was produced, as they are made in the case of corn.

Mr. SMITH. No. Each individual farmer is contacted, his record per acre for 5 years is taken, and the pounds per acre are considered as a basis of his benefit.

Mr. SHIPSTEAD. I am glad to stand corrected. So far as benefit payments to corn growers are concerned, they are figured out by regions. A farmer in Illinois receives more than a farmer in Minnesota; but that is because he produces more. However, the farmers in Minnesota get the same general price, whether or not one produces more corn than another. I assumed that the payment of cotton acreage was based upon the same formula.

Mr. SMITH. Mr. President, if I may recur to the next amendment, I will say to those who are interested in section 1 (b) of House bill 8052 that it makes the base period for wool and mohair 1919 to 1929 instead of 1909 to 1914.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Oregon?

Mr. SMITH. Certainly.

Mr. McNARY. What was the reason why wool and mohair were inserted and incorporated in this amendment? Did any wool growers appear before the committee?

Mr. SMITH. I really should like to state that the amendment was inserted in the House. I do not recall whether we had any of the processors or growers of wool before us, but I understand that the House inserted the amendment.

Mr. McNARY. Is the policy and purpose of Congress to be that this shall be its attitude regarding the insertion of commodities, the inclusion of which is not sought by the producers thereof?

Mr. SMITH. I am not in a position to state what occurred in the House, but I do not recall that any wool producers or processors appeared before the Senate committee. I do not know what occurred in the House.

Mr. WHITE. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Maine?

Mr. SMITH. I yield.

Mr. WHITE. The provision is, however, put in the bill on the basis of testimony offered elsewhere rather than before the Senate committee?

Mr. SMITH. This is the text of the House bill which we are discussing.

Mr. WHITE. Can the Senator tell us why the post-war period was taken rather than the period from 1909 to 1914, which is the base period for everything else?

Mr. SMITH. The testimony incorporated in the House report was to the effect that the price of wool and mohair at that period was extremely low, far below the parity of the basic price.

Mr. WHITE. Is it not true, as a matter of fact, that using the post-war period of 1919 to 1929 gives a price pretty nearly 100 percent above the price for many years in the past? Is it not a higher price than at least from 1895 on?

Mr. SMITH. It may be, but the basis upon which it was calculated was what the return would be to the producer of these two articles from 1909 to 1914 as compared to what was the return for wheat and cotton and cattle. It was found that the returns for those articles were far below that average base.

Mr. WHITE. Was any data given to the Senate committee which would justify an approximately 100 percent increase, as I understand will be the result of this provision?

Mr. SMITH. I do not think the percentage would have anything to do with trying to ascertain what would be the proper period to take in order to determine the purchasing power of the wool producer's dollar. After considerable search it was found that the ante-war period named approximated the post-war period for the other articles. That is my information. Whether it is a 100-percent increase or 50 percent or 200 percent, the object was to get the period which would be nearest to approximating the purchasing power of the producer's dollar.

Mr. WHITE. The practical result is that it is increasing the price of wool to the manufacturer by nearly 100 percent, I understand.

Mr. SMITH. As I said in my opening remarks, the object of the bill is to try to secure for the producer of the raw material a return comparable to what he has to pay for the articles which he buys.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. SMITH. Certainly.

Mr. VANDENBERG. Would not the Senator agree that it is possible artificially to put these prices so high that manufacturing users are inevitably driven to substitutes?

Mr. SMITH. As I understand the purpose of the bill, wherever there is a danger of that happening, a compensating tax is placed upon the competing article so as to keep them on a parity.

Mr. VANDENBERG. So that the authority under the bill finally seeps out into almost any undefined field of trade in the Nation?

Mr. SMITH. Yes; if that undefined field of trade directly and pertinently affects the price of the product, the basic article.

Mr. VANDENBERG. Let us personify the point. Wool and mohair are used to a large extent in connection with the production of automobiles, let us say, in the upholstery. By taking the post-war period and determining that as the base price for wool and mohair, according to the statement just

made by the Senator from Maine [Mr. WHITE] we would increase the cost of wool and mohair in the production of an automobile about 100 percent. My expectation would be that the automobile manufacturer would immediately search for a substitute, and he is very effective usually in seeking substitutes. He has produced some amazing substitutes in many fields.

As I understand the Senator from South Carolina, whatever that substitute might be which may be subsequently discovered, though unknown to us today, it would fall within the jurisdiction of a compensating tax.

Mr. SMITH. Yes; just as the Senator's party applied the same principle exactly in its high protective tariff policy——

Mr. VANDENBERG. Oh, no!

Mr. SMITH. Whereby they placed a compensatory tax on all competing articles so the highly protected commodities had the right-of-way.

Mr. VANDENBERG. There is the very substantial difference that, up to within a few months, we have at least permitted Congress to write the tariffs, whereas in this instance it is proposed to permit the great Secretary of Agriculture to write his own tariffs as he sees fit at any time.

Mr. SMITH. I do not know; but wherever there happened to be a competing article a compensatory tax automatically went on it under the law enacted by the Senator's party. When we come here to try to do for the farmer what the Senator's party so abundantly did for the manufacturer, we begin to hear it said that the authorities can go into all sorts of undefined territory. It is undefined until it defines itself as a serious competitor of the article being produced.

Mr. LEWIS. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. LEWIS. With the consent of the Senator from South Carolina, I take the liberty of addressing an interrogatory to my neighbor and colleague, speaking of the State of Michigan, to the Senator from Michigan [Mr. VANDENBERG], in view of his observation to the Senator from South Carolina as to mohair and wool and the statement of the able Senator from Michigan that the operation of this measure, as I gather, means an increase of price to all manufacturers. Did the able Senator from Michigan mean all manufacturers using any commodity covered by this bill, or did he mean any manufacturer that has to do only with mohair and wool?

Mr. VANDENBERG. I am afraid I did not follow the Senator's question. I am sure it is my fault.

Mr. LEWIS. Oh, no. It is possible there is something involved in my sentence.

When the Senator from Michigan stated a moment ago to the Senator from South Carolina that the operation of the bill meant an increase to the manufacturer, following the remarks of the Senator from Maine [Mr. WHITE], did the Senator from Michigan mean to intimate that as to every commodity covered by the bill it means an increase to the manufacturer having to do with such commodities, or did the Senator limit himself to mohair and wool, to which he referred?

Mr. VANDENBERG. I am discussing mohair and wool at the moment, and I think as we come further down into the bill we shall discover there is the same unlimited jurisdiction in respect to compensatory taxes upon substitutes throughout the entire scheme.

Mr. LEWIS. Is it the idea of the Senator from Maine and the Senator from Michigan that the operation of the bill, generally speaking, will increase the prices to the manufacturer, which necessarily would reflect themselves upon the consumer?

Mr. VANDENBERG. That would be my view. I have no quarrel with that insofar as it is necessary to provide a reasonable cost of production to the farmer. I quite agree with the Senator from South Carolina that that is absolutely essential. I am simply inquiring into the physical fact whether the Senator from South Carolina may not so zealously seek to do that thing that he may drive the manufacturer to seek a substitute and thus nullify the purpose we are trying to accomplish.

Mr. LEWIS. I thank the Senator from South Carolina.

Mr. SMITH. I call the attention of the Senator from Michigan to the fact that all these amendments seek to do, according to the proponents of the bill, is to fix the purchasing power of the farmer's dollar at exactly the same point as the purchasing power of the dollar of the man whose product he has to buy. None of us could quarrel with that. It may be necessary to do some very startling things in order to bring that about; but would we not prefer to do the very radical things necessary, rather than to leave the farmers in the defenseless and helpless condition in which they now find themselves? That is the object of the measure before us today, and that is the matter we now have to consider.

It is notorious that, so far as the farmer is concerned, he never knows what he is going to get for his product. He has no voice in the price of what he has to sell. He has no voice in the price of what he has to buy. The Government now is attempting to step in and take the place of an organization, and, in justice and equity, say to the farmer, "We are going to try so to organize the marketing process that you shall receive a just return for the products you contribute to organized society."

Mr. AUSTIN. Mr. President, will the Senator yield for a question?

Mr. SMITH. I yield.

Mr. AUSTIN. May I call the Senator's attention to page 7, lines 16, 17, and 18?

Mr. SMITH. Will the Senator bear with me for a little while? I desire to read through the proposed amendments, so that each Senator may be familiar with what they are, and to what part of the bill they pertain.

Mr. AUSTIN. Very well.

Mr. CAREY. Mr. President, will the Senator yield for a question?

Mr. SMITH. Yes.

Mr. CAREY. As I understand, the object of the amendment affecting mohair and wool is to make them basic commodities.

Mr. SMITH. That is correct.

Mr. CAREY. They will be subject to a processing tax?

Mr. SMITH. Yes.

Mr. President, section 2 (a), the next amendment of House bill 8052, is purely a technical change. It makes no change in the law.

Mr. McNARY. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Oregon?

Mr. SMITH. I yield.

Mr. McNARY. My attention has been distracted a great many times. Before leaving the subject of wool and mohair, is the base period for ascertaining the parity price for wool and mohair changed from the base period for the other commodities mentioned in the original act?

Mr. SMITH. To arrive at the base period, the years had to be ascertained when the prices received for the units of wool and mohair most closely approximated the parity of the other commodities during the pre-war period. That is the reason why the post-war period years were adopted, because the pre-war prices for these two articles were so very low that they were just impossible. Therefore, in order to get anything like parity, it was necessary to search for years that really represented an equitable base period. If the pre-war period had been accepted as the base, it would not have been any benefit at all to the wool or mohair grower. The bill, therefore, takes the years from 1919 to 1929.

Mr. BYRD. The same years as in the case of tobacco.

Mr. SMITH. In this case the post-war period has been substituted for the pre-war period.

Mr. WHITE. And in so doing, a period has been selected when wool was higher than it has been within a period of 40 years or so.

Mr. SMITH. It is not a question of how high wool has been. It is a question of whether the purchasing power of the wool grower was on a parity with that of the man whose product he had to buy. An effort has been made to ascertain what period that was; and there has been taken the post-war period from 1919 to 1929 as a time when the prices

of wool and mohair were approximately on a parity with the prices of corn and meat and cotton and wheat in the prewar period.

Mr. President, I now come to sections 2 (b) and 2 (c) of the bill we have before us. They are identical with sections 1 and 2 (a) of the Senate bill, and simply substitute the word "production" for the word "reduction", and put in the word "adjustment." The reason for that is that it was found that in certain regions no reduction might be needed, but an increase; and, regionally, it was desired to have the power to adjust rather than to just to have the word "reduction" used.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. BYRD. I should like to ask the Senator if that would permit a benefit payment to a farmer who increases his crop as well as to the one who reduces his crop?

Mr. SMITH. For certain purposes of the bill that will be found to be true, and I will show the Senator the reason when we get to it.

Section 2 (d) of House bill 8052 does not appear in the Senate bill. That does not concern us. It amends section 8 (1) of the Agricultural Adjustment Act by empowering the Secretary to make, in addition to rental or benefit payments for acreage adjustment, which are already authorized in section 8 (1), payments on any basic commodities for expansion of domestic or foreign markets, for removal of surpluses, and in connection with the production of that part of a commodity required for domestic consumption. The real object of this section is to authorize and require the levy of a processing tax in order to finance the making of such payments. In other words, the processing tax now results in an extra price for the wheat and cotton consumed here. It is now proposed to attempt a payment on the exportable part, and this is what this provision seeks to do.

Mr. BYRD. Mr. President, I should like to ask the Senator from South Carolina whether his analysis now refers to Senate bill 1807 or to the present law.

Mr. SMITH. I am referring to the House amendment.

Mr. BYRD. The Senator is speaking of the differences between the two bills. Is he speaking of the differences between the House bill which has been offered as a substitute and the old Senate bill 1807, or is he speaking of the difference between this bill and the present legislation?

Mr. SMITH. I am speaking of the differences between this bill and the present legislation, because I take it that the Senate will agree to the substitution of the House bill for the Senate bill.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. VANDENBERG. Do I understand that the paragraph which the Senator has just described is an approach to the two-price system for agricultural commodities?

Mr. SMITH. It is an approach to an effort to eliminate the two-price system.

Mr. VANDENBERG. No; on the contrary, is it not substantially the theory of the old McNary-Haugen bill, which is a two-price system—a high price at home, and whatever price can be obtained abroad?

Mr. SMITH. No, no. The old McNary-Haugen bill tried to make the price uniform by the payment of rebates on all exported articles, so that the price to the American producer would be uniform.

Mr. VANDENBERG. Yes; but by two-price system I mean a higher price in the home market than abroad.

Mr. SMITH. But compensating for the lower export price.

Mr. VANDENBERG. Exactly. This is an approach to the two-price system as I now describe it?

Mr. SMITH. Yes; as the Senator now describes it.

Mr. VANDENBERG. And that is substantially the McNary-Haugen theory as we used to understand it; but I assume that this language would not permit the application of an equalization fee.

Mr. SMITH. Oh, no.

Mr. WHITE. Mr. President, will the Senator recur to subparagraph (c), at line 14, and explain to me just what that seeks to accomplish? I understand that it permits the Government to make rental payments or benefit payments, not alone in cash but in commodities of other kinds.

Mr. SMITH. The bill specifically permits the Secretary to pay the wool producer in wool. He cannot pay him in any other kind of commodity. Later on in the bill that is specifically defined.

Mr. WHITE. It proposes to insert these words:

Or to be made in quantities of one or more agricultural commodities acquired by the Secretary of Agriculture pursuant to this title.

Mr. SMITH. Yes.

Mr. WHITE. I thought that was broad enough to permit the Secretary to make the payment in any one of the many agricultural commodities in the possession of the Government.

Mr. SMITH. No. The bill later on—I shall come to that directly—specifically provides that where payment in kind is made, it has to be in kind to the producer of the particular article. For instance, in lieu of cash payment for the wool producer, he may be paid in wool; the cotton producer may be paid in cotton; the corn producer may be paid in corn. The bill later on specifically defines that.

Mr. WHITE. These are matters with which I am not familiar; but why should the cotton producer, who produces cotton that he wishes to sell, desire to be paid in cotton, the very crop of which he is undertaking to dispose?

Mr. SMITH. To get rid of the surplus. He takes that in lieu of production.

Mr. BYRD. What would the cotton producer do with cotton?

Mr. SMITH. He would use it in lieu of production, just as he did under the law we passed which Mr. Hoover failed to sign.

Mr. BYRD. He could not eat it. He would have to sell it; would he not?

Mr. SMITH. He would keep it in lieu of production next year. It is the only method we can find that will take care of overproduction. For instance, suppose we were to produce so much wheat that we would have practically a 2-year supply: Instead of sacrificing the whole thing, under this bill when the price got down to a point where it meant starvation and ruin for the wheat grower, the Government would be authorized to purchase wheat and resell it to the farmer in lieu of next year's production, so that the speculator would not get the benefit of the farmer's acreage reduction, but the farmer would get the benefit of it.

Mr. BYRD. Does the Senator think that the farmer would rather have cotton than cash?

Mr. SMITH. Thousands would, and I would, if in taking cotton I could borrow on it and substitute it for next year's production. When the price goes up I have made a crop, virtually speaking, without producing.

Mr. BYRD. Suppose the price does not go up?

Mr. SMITH. If the price does not go up it is not profitable for me to make a crop.

Mr. BYRD. In other words, the Senator thinks the farmer would rather have a hundred dollars' worth of cotton than to have a hundred dollars in cash?

Mr. SMITH. That is the option.

Mr. BYRD. I understand it is optional with the Secretary of Agriculture.

Mr. SMITH. No; it is optional with the farmer, under this bill.

Mr. HATCH. Mr. President, a question was propounded a few moments ago regarding wool and mohair, and I did not understand the answer. There has been some opposition in my State to this amendment, and I think there is a misapprehension about it. I desire to ask whether the bill changes anything concerning the wool and mohair industry except the base period. Is that the only effect it would have?

Mr. SMITH. It puts them under license.

Mr. HATCH. Permits the industry to be licensed?

Mr. SMITH. Yes.

Mr. HATCH. It does not make wool and mohair basic commodities?

Mr. SMITH. No.

Mr. VANDENBERG. Mr. President, I am sure the Senator from New Mexico is seeking to clarify the situation.

Mr. HATCH. I am seeking information.

Mr. VANDENBERG. In reply to previous questions, I understood the Senator from South Carolina to tell the Senator from Wyoming a few moments ago that this does make wool a basic commodity and that it does permit the levying of a processing tax on wool.

Mr. SMITH. It permits the levying of a processing tax on wool, but it puts the two products in that class because the base period is a different one.

Mr. VANDENBERG. I understand the difference in periods, but this does grant the power to make wool a basic commodity and assess a processing tax against it. Is not that correct?

Mr. SMITH. Not under this bill.

Mr. VANDENBERG. Was not that the Senator's statement to the Senator from Wyoming a little while ago?

Mr. SMITH. Let us look on page 6 of the House text, under section 4, line 17, where it is provided:

> Except in the case of milk and its products, tobacco, and sugar beets, no license issued under such clause (3) shall be effective with respect to any commodity (or product thereof) which on April 1, 1935, is defined, under section 11, as a basic agricultural commodity, nor shall any such license be effective with respect to any nonbasic agricultural commodity (or product thereof) except wool, mohair, fruits, and vegetables.

Those are nonbasic.

Mr. CAREY. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. CAREY. Why would they set up a base period if it were not for the thought of the processing tax? The base period is set up so that a price may be fixed on any commodity.

Mr. SMITH. Let me explain to the Senator. Wherever a product is considered a basic commodity no license whatever is applied to it. The producer is remunerated by the processing tax. Where it is taken out of the class of basic commodities, then the processors and distributors are licensed, and they have trade or marketing agreements.

Mr. CAREY. The Senator is talking about a different part of the bill. Under the bill, as I read it, wool becomes a basic commodity and subject to the processing tax. I do not say that a wool dealer or producer would be licensed.

Mr. SMITH. Under the terms of the House text the wool is removed from the operation of the processing tax, and processors and distributors are put under a license in accordance with marketing agreements arrived at by the producers.

Mr. CAREY. A base price is set up, and how could that base price be obtained if there were not a processing tax to raise the price? How would it be done?

Mr. SMITH. I presume that through the licenses, and marketing agreements of the producers, they will be allowed a price equal to the base price. But wool has been taken out on the ground, it is said, that there are so few purchasers and producers of wool that it has been wholly impossible to levy a processing tax with any degree of success.

Mr. CAREY. I cannot understand the mechanics, because on any other commodity, under this measure, there will be a processing tax and the producer will be paid the difference. If they are not agricultural commodities, where will the money come from to raise the price?

Mr. SMITH. I understand from the Department that through the marketing agreements there would be fixed a price at which the producers would sell, and the processors and distributors would be required, under their licenses, to pay that price.

Mr. CAREY. Suppose there were no market demand for the wool, and suppose the price should be so high that wool would come in from abroad?

Mr. SMITH. Under the marketing details, all those things are worked out under the marketing agreements.

Mr. CAREY. This is price fixing, then.

Mr. SMITH. It has those features in it, yes; just as the manufacturer has to fix his price in order to take care of overhead.

Mr. CAREY. In other words, the Department will say, "You must have so much for wool, and we will fix the price."

Mr. SMITH. It approximates that; yes. That is frank.

Mr. O'MAHONEY. Mr. President, if I understand correctly, it does not go that far.

Mr. SMITH. It approximates that.

Mr. O'MAHONEY. If a marketing agreement is made, its objective, of course, will be to raise the price.

Mr. SMITH. To the parity.

Mr. O'MAHONEY. And this provision is designed to substitute, as a guide for the Secretary in entering these marketing agreements, the price from 1919 to 1929, after the war, for the extremely low price range of the pre-war period.

Mr. SMITH. Yes; it is just to bring the price to the parity.

Mr. O'MAHONEY. As I read the language to which the Senator has just alluded, it seems to be a very clear declaration that wool, mohair, fruits, and vegetables are not basic commodities.

Mr. SMITH. That is correct.

Mr. O'MAHONEY. And not only is that true but in the report which was filed by Mr. JONES, from the Committee on Agriculture in the House of Representatives, I find, on page 6, this statement referring to the new licensing provision:

> They cannot apply to any basic agricultural commodity (or its products), as now defined, except that they can apply to milk and its products, tobacco, and sugar beets.

That is a list of basic commodities.

Mr. SMITH. Things which were basic commodities.

Mr. O'MAHONEY. And still are.

Mr. SMITH. Yes; in a way.

Mr. O'MAHONEY. Then we read the next sentence:

> Nor can these licenses apply to any nonbasic agricultural commodity or product thereof except wool, mohair, fruits, and vegetables.

In other words, here is a distinct statement in the report affirming the language of the bill that wool, mohair, fruits, and vegetables are nonbasic commodities.

I wanted to ask the chairman of the committee this question: Is my understanding correct that there is no provision in the bill now before us amending that section of the Agricultural Adjustment Act which names the basic commodities?

Mr. SMITH. That is correct.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. BYRD. It is unquestionably true that wool and mohair and fruits and vegetables are not made basic commodities, but I should like to correct the statement of the Senator from South Carolina when he said that no license can be issued for basic commodities, because limitations on page 6 refer to clauses 2 and 3, and there is another licensing section known as clause 1 which would be made effective. There are three separate and distinct licensing clauses in the bill, 1, 2, and 3, which provide a universal licensing system for all farm products and competing products if the Secretary desires to put it into execution.

Mr. HATCH. Mr. President, the particular section referred to by the Senator from Virginia only authorizes licensing in cases of unfair practices.

Mr. BYRD. Let me answer that suggestion. Not only unfair practices, but the effectuation of the declared policy of the act, which is to restore normal economic conditions in agriculture.

Mr. SMITH. The Senator from Virginia understands that on page 4, line 23, this language is used:

> To eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy.

Mr. BYRD. Let the Senator read a little further, " and the restoration of normal economic conditions " to agriculture.

Mr. SMITH. I understand, but that is just the sequence of the unfair practices. If there are fair practices, then the processing tax applies and no license shall be applied, and the Senator will find further on in the bill a provision that there must be due diligence in ascertaining what are unfair practices.

Mr. BANKHEAD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. BANKHEAD. In answer to the Senator from Virginia, I wish to call attention to the fact that this is limited to unfair practices. It reads:

To eliminate unfair practices or charges that prevent or tend to prevent the effectuation—

And so forth.

Mr. SMITH. I said it was predicated on that.

Mr. BANKHEAD. Unfair practices only.

Mr. SMITH. I wish now to consider the next amendment. Section 3 of H. R. 8052 corresponds to section 2 of Senate bill 1807. In the House bill it has been altered to conform to the changes heretofore referred to, which authorize the levying of processing taxes in connection with the expansion of markets and removal of surpluses of agricultural commodities.

Mr. ROBINSON. Mr. President, may I ask the Senator where the amendment appears in his amendment in the nature of a substitute?

Mr. VANDENBERG. On page 3, line 14.

Mr. SMITH. As I said, the House bill has been altered to conform to the changes heretofore referred to, which authorize the levying of processing taxes in connection with the expansion of markets and removal of surpluses of agricultural commodities. The major result of these alterations is to deprive the administration of the authority which it has under the present act to expand domestic and foreign markets for and remove surpluses of nonbasic commodities.

Mr. McNARY. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. McNARY. As much as I should like to have done so I have not been able to follow the Senator consecutively, on account of interruptions. Did the Senator discuss the amendment on page 2 to strike out the word " reduction " and to insert in lieu thereof " adjustment? "

Mr. SMITH. The Secretary of Agriculture and his assistants claim that in the operation of the law they already have found that it might be necessary, in place of reducing, to increase, or to adjust the conditions, rather than be restricted by the word " reduction."

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. GEORGE. Where it is found necessary to increase production, is it not reasonable to expect that the price of the commodity, the production of which needs to be increased in order to supply a market demand, will enhance, without putting it in the power of the Secretary of Agriculture to pay benefits to a farmer either to reduce or to increase his production? Are we now abandoning the whole theory on which the Agricultural Adjustment Act was first promulgated, and making the Secretary of Agriculture the complete guardian of the farmer, paying the farmer when he needs to have him increase, and paying him when he desires him to reduce?

Mr. SMITH. I shall enter into the philosophy of this measure only to the extent of saying that the farmer has not been able to do those things for himself up to the present time. However, in answer to the Senator from Georgia, I will say that I think what they have in mind is that there are certain commodities, perhaps, which may be advantageously used in export, but the price of which might not be up to the parity; and the Senator will find in this bill that an effort is made to incorporate some of the features of the McNary-Haugen bill namely, the adjustment for the farmer on his exported commodities as well as paying a farmer on his domestically consumed commodities.

Mr. GEORGE. I appreciate that and I think I thoroughly understand that. However, that has not anything to do, as I see it, with this provision.

The bill proceeds on to two theories. There is a conscious, definite, well-defined purpose to make it possible for the Secretary of Agriculture to increase the processing tax, to impose and collect more taxes to pay out greater benefits, and he is desirous of being relieved of all restrictions, so that he can pay out the proceeds of that tax to increase production or reduce production, or to reduce acreage or to increase acreage. It is the purpose to give him a perfectly free hand, as I understand. The amendment is difficult to understand as it is drawn, but undoubtedly that is what is meant; and I cannot interpret it in any other way. It has not anything to do with export, as I understand it.

Mr. SMITH. Mr. President, I think the basic principle underlying it is an adjustment of our production to whatever volume our export and domestic consumption may require.

Mr. GEORGE. I grant that; but the Agricultural Adjustment Act was predicated upon one thought and one theory and one fact, which is that we were accumulating and had accumulated surpluses in this country to the point where the market price had broken down. We had accumulated them in the domestic market, and, of course, our domestic price went down. So an effort was made to devise some means by which we could control the production so as to raise the parity price. In the meantime the power to impose a tax was given to the Secretary of Agriculture, and the power to pay benefits was given to the Secretary of Agriculture, to induce reduction in acreage or reduction in production. Now we throw it wide open, so that the Secretary of Agriculture may do much as he pleases with the money raised through the taxes which he imposes.

Mr. SMITH. I desire to call the Senator's attention to the fact that getting rid of the surplus, which was one of the potent causes in breaking the price, is only one of the objectives which have been sought by the Government since I have been a Member of the Senate, namely, devising some plan, some way, somehow by which the farmer would not be at the mercy of an uncontrolled market.

Mr. VANDENBERG. Mr. President, will the Senator yield for a further question?

Mr. SMITH. I yield.

Mr. VANDENBERG. Does the word " reduction " have to be changed to the word " adjustment " in order to justify the approaching wheat policy, which continues the reduction benefits without requiring any reduction in order to obtain the benefits?

Mr. SMITH. I think perhaps that is one of the objects in view.

Mr. VANDENBERG. That is the new adjustment which the Senator has in mind.

Mr. SMITH. The Senate report says:

In connection with many of the commodity benefit programs, it has frequently been found desirable to require a larger reduction in acreage from the base period during the first year covered by such programs than is required during the second or later years. Thus, while the provisions with reference to the later years require a reduction in acreage in comparison to that which obtained during the base period, they allow an increase in acreage over that which is permitted during the first year of the reduction program.

So that is just along the line to which the Senator has called my attention; and I presume the price which the farmer is to receive must be the level of the market, or it must be supplemented by funds derived from a special tax or from the regular income received by the Government.

Mr. VANDENBERG. However, is not the Senator from Georgia precisely correct when he says we are departing from the original purpose of the act when we now propose to license benefit payments without requiring any reduction in return for those benefit payments?

Mr. SMITH. It may be as necessary to increase production for a definite and specific purpose, for the benefit of agriculture, as it was to decrease production.

Mr. VANDENBERG. I am not inquiring into the justification for it. I simply am asking whether we are not departing entirely from the original formula.

Mr. SMITH. I do not think the original intent was for the purpose of reduction alone. We started out, under the Hoover administration, to try to bring about some kind of an organization which would insure a reasonable price to the producer. Now, if it is found that in some instances an increase of production is desirable, for whatever purpose it is required, it might be necessary that the grower be compensated.

Mr. VANDENBERG. What is the theory upon which benefits are paid to wheat farmers without requiring any reduction in acreage on their part? What theory defends that procedure?

Mr. SMITH. I did not know of any difference until now.

Mr. BANKHEAD. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. BANKHEAD. I am glad to have the Senator yield at just this moment, because of the argument of the Senator from Georgia [Mr. GEORGE] and the Senator from Michigan [Mr. VANDENBERG].

The original act, as we all understand, used the word "reduction." What is the base upon which the reduction is to be made? Under the language of the act we could not make any change and pay any benefit payments unless a reduction had been made over the preceding year. A base is established, as in 1934; and then we come to 1935, and we do not make a reduction, but authorize an increase in acreage. Under those circumstances, at least it is questionable whether we can make benefit payments without making a reduction over the fixed period.

In the case of wheat we had a period of reduction which was fixed, based on previous experience. Then came the drought. Then came in large measure the disappearance of the surplus. The provision in this measure authorizes the payment of benefits without requiring a further reduction of acreage, or without requiring at least the same reduction previously provided, though there are those who contend that under the language of the original act there can be no benefit payment without a reduction over the previous reduction. The word "adjustment" eliminates that questionable phase or that construction.

Besides, we must bear in mind, in answer to the question of the Senator from Michigan, that there will be two methods under this program. The one objective is to secure a parity price. That is the declared policy of the act. There are more ways, Mr. President, to accomplish that result than merely by resorting to a reduction in acreage in order to make applicable the law of supply and demand. The other method, the one authorized by this bill, is in addition to the reduction in acreage, namely, the payment of benefit payments to help lift the price of the agricultural commodity above the level to which it is lifted by the acreage reduction.

We may not do so merely by an acreage reduction in the case of cotton. In that instance we know that we have not adjusted the supply to the reasonable requirements of the market. Therefore a mere reduction in acreage in itself in 1 year, in 2 years, or even 3 years may not adjust the supply to the demands of the market. So the original act contemplated and authorized benefit payments in addition to the payment of acreage rental under a reduction program.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. TYDINGS. I was wondering if the Senator from Alabama had finished. If so, I wish to ask the Senator from South Carolina a question.

Mr. BANKHEAD. I have concluded.

Mr. TYDINGS. I did not wish to interrupt the Senator from Alabama.

Mr. BYRD. Mr. President——

Mr. SMITH. I yield to the Senator from Virginia.

The PRESIDING OFFICER (Mr. LEWIS in the chair). May the Chair suggest that Senators desiring to interrupt address the Chair so that the Chair may ask the Senator having the floor to which Senator he desires to yield?

Mr. SMITH. I yield to the Senator from Virginia to ask a question of the Senator from Alabama.

The PRESIDING OFFICER. The Senator from South Carolina yields to the Senator from Virginia.

Mr. BYRD. I should like to ask the Senator from Alabama if in his judgment the change from the word "reduction" to "adjustment" would permit the payment to a farmer directly for increasing his crop, whatever that crop might be?

Mr. BANKHEAD. I think it would authorize the payment of benefit payments if that were necessary to help give the farmer a parity price for his crop.

Mr. BYRD. Will the Senator explain how the price of a particular commodity can be increased by increasing its production?

Mr. BANKHEAD. If the benefit payments are related to and added to the price for that production it indirectly gives the farmer an additional price.

Mr. BYRD. But that is not the conception of the act, is it?

Mr. BANKHEAD. I think so. That is just the argument I have made, that it authorizes not only payment for acreage reduction but, where that is not sufficient to give the parity price, it authorizes also benefit payments in addition thereto. One is rentals and the other benefit payments. They are both authorized.

Mr. BYRD. Then, it is the policy of the Department of Agriculture to pay farmers for increasing their crops, if it is necessary to do so in order to obtain the parity price?

Mr. BANKHEAD. I do not think an increase in the crop ever increases the price.

Mr. TYDINGS. Mr. President, will the Senator yield?

Mr. SMITH. I do.

Mr. TYDINGS. I understand the Supreme Court now is passing on the N. R. A.; I do not know what the decision is; but I am wondering if the N. R. A. Act, particularly its intrastate features, should be declared unconstitutional, how far that same philosophy would make unconstitutional this bill as it is now conceived.

Mr. SMITH. I think the difference beween this bill and the N. R. A. law is that this is largely voluntary; it provides for contracts between certain parties and the Government.

Mr. TYDINGS. Let me interrupt the Senator, if I may. As I understand, the Secretary of Agriculture is given the power to license in certain categories and under certain conditions. If he is given that power, and he should refuse to license a particular farmer dealing wholly in intrastate business——

Mr. SMITH. The Senator means a processor and not a farmer.

Mr. TYDINGS. That is correct; yes. In that case if the N. R. A. should be held to be unconstitutional because of its intrastate provisions, would not the same objection apply to the pending measure?

Mr. SMITH. I do not think this bill would be valid. I do not think the Secretary under the law could arbitrarily license any man doing wholly an intrastate business.

Mr. TYDINGS. That answers my question. Then, as I understand the Senator's conception of this bill, the licensing power will affect only producers or processors who are engaged in interstate commerce.

Mr. SMITH. Necessarily.

Mr. TYDINGS. That is the conception of the bill?

Mr. SMITH. I think so.

Mr. BYRD. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Virginia?

Mr. SMITH. First, let me define clearly the distinction, and then I will yield. I do not think we have any right or power to interfere with business transactions wholly intrastate. I do not think there is any way for us to reach them. The only approach of which I know was in stretching the commerce clause in the railroad cases, where the Interstate Commerce Commission declared that a railroad wholly intrastate might indirectly affect interstate commerce, and therefore would be subject to rates, fares, and charges as a road that was interstate. But there will be found in the

proposed amendment a clause setting forth almost the identical language that was used in the case of the railroads, namely, "affecting or modifying in any way interstate commerce."

Mr. TYDINGS. Mr. President, may I ask the Senator another question?

Mr. SMITH. Yes.

Mr. TYDINGS. In certain parts of Maryland there are a great many milk producers. They generally supply not only Washington but Baltimore, of course. Suppose the Secretary of Agriculture, under some marketing agreement, should define an area, as provided in this bill, which would allow, we will say, shippers of another State to ship milk into Baltimore under certain conditions. I do not see how he could regulate in any way the business of the shippers who produce milk in Maryland and sell it in Baltimore.

Mr. SMITH. Neither do I.

Mr. TYDINGS. So that the same criticism which was made as to the difficulty of enforcing the N. R. A. would apply, namely, that there would be one class of people supplying milk unregulated while the other class of people who were outside the State would be regulated.

Mr. SMITH. My idea of this bill, reading the text, is that those located within the territory described by the Senator would enter into a marketing agreement, and then the interstate shipper who wanted to avail himself of that market would have to subscribe within that zone to the agreement perfected by those in the vicinage where the business is carried on.

Mr. TYDINGS. But the Senator will concede, will he not, that the Secretary of Agriculture has nothing to do with an agreement made between the producers and the distributors of a commodity all within a State?

Mr. SMITH. Certainly; except voluntarily. If they set up a marketing agreement, then the processor who has interstate relations can be licensed in order to make him carry out and effectuate the policy of the marketing agreement entered into by all the milk producers. That is the object of this bill.

Mr. TYDINGS. Mr. President, let me say to the Senator from South Carolina that I have just been advised that the Supreme Court generally has held the whole N. R. A. to be unconstitutional, and I take it for granted that information is accurate. If that be true, it strikes me that we have to a large extent the philosophy of the N. R. A. insofar as intrastate control is concerned written into the pending bill, because there is no exception made in the bill which I hold in my hand as to intrastate commerce.

Mr. SMITH. If the Senator will read carefully the provisions for marketing agreements, he will find they are entered into as a form of voluntary contracts.

Mr. TYDINGS. Suppose 70 percent of those interested voted to become parties to one of these voluntary contracts and 30 percent vote not to do so, and the business is all intrastate, what can the Secretary of Agriculture do about it?

Mr. SMITH. I do not think he can do anything about it.

Mr. TYDINGS. What good will an agreement do if it does not apply to everybody?

Mr. SMITH. I think if the marketing agreement shall be demonstrated to be beneficial, others will seek to enter into it. All that I can say is, as the Senator from Maryland and every other Senator here knows, that if the business is conducted wholly within a State—if, in other words, it is intrastate—we cannot do anything with it by Federal law. That is all there is to it.

Mr. TYDINGS. Then there is nothing in this bill which provides that any such thing can be done?

Mr. SMITH. No; and if there were, the provision would be just idle words.

Mr. BYRD. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Virginia?

Mr. SMITH. I yield.

Mr. BYRD. I am very much interested to learn what the Senator has said with respect to the intrastate feature; but, as a matter of fact, this bill has new language in it which the original legislation did not contain. I refer to the words "in competition with or so as to burden, obstruct, or in any way affect interstate or foreign commerce."

Mr. SMITH. I just called attention to that.

Mr. BYRD. Then, if reference be made to the report of the House committee, it will be found that it is intended to control intrastate shipments where intrastate shipments affect interstate shipments.

Mr. SMITH. Yes; that is the language that was used.

Mr. BYRD. In other words, the effort has been made to control intrastate shipments just as completely as it is possible by law to control interstate shipments.

Mr. SMITH. As Chairman of the Interstate Commerce Committee, I did not subscribe at the time to the absurd length to which they went in interpreting the law to which I have referred, nor do I subscribe to it now; but where the intrastate condition does affect the interstate condition it ought to be subject to the same regulation as is the interstate. If the Senator means to define where one begins and the other leaves off, it is all right.

Mr. BYRD. In other words, if it does affect interstate commerce, it would be controlling intrastate commerce, if the amendment should be constitutional.

Mr. SMITH. If intrastate commerce affects disastrously interstate commerce, it then becomes subject to the interstate commerce law because it is affecting the instrumentalities of the Federal Government.

Mr. BYRD. I understood the Senator stood upon the principle that we should not control intrastate commerce.

Mr. SMITH. I do.

Mr. BYRD. This amendment certainly attempts to control it.

Mr. SMITH. I do not like the language here any more than I liked it in our Transportation Act, but I maintain that if an intrastate business in its relation to interstate business is affecting interstate business disastrously, then by the very terminology used it is interstate and is no longer intrastate. For instance, in the child-labor law it was attempted to forbid the shipment in interstate commerce of any goods from a factory which employed child labor. The Supreme Court held that it was not vested with an interstate interest until it was actually offered in interstate transportation. The Senator and I can conceive of conditions where an intrastate transaction may be for the purpose of affecting interstate business. In that case, the moment it does affect interstate business, and it can be substantiated that the intrastate business is affecting disastrously interstate business, it immediately becomes invested with an interstate character.

Mr. BYRD. There could not be any broader language than that which is contained in the amendment, because it says:

> In any way affects interstate or foreign commerce.

That is all the territory it is possible to include. It is all included in that language.

Mr. SMITH. I do not know but that a fair interpretation of that language would be permissible, such as "or affecting interstate commerce."

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Alabama?

Mr. SMITH. I yield.

Mr. BANKHEAD. On this point I beg to call the Senator's attention in a very direct way to two decisions of the Supreme Court of the United States.

In *Stafford* v. *Wallace* (258 U. S. 495), which was a grain futures case, the Supreme Court sustained the provisions of the packers and stockyards act which, among other things, regulated practices and charges of commission merchants and dealers. In *Chicago Board of Trade* v. *Olsen* (262 U. S. 1), the Court sustained the constitutionality of the grain-futures act regulating futures contracts on the boards of trade. In both cases the transactions regulated were entirely intrastate in character. The legislation was sustained, however, on the grounds that the conduct regulated bur-

dened and affected interstate commerce in wheat and livestock. In the Stafford case the Supreme Court announced the principle as follows:

> * * * Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the facts of the danger and meet it.

Another case was *United States* v. *Ferger* (250 U. S. 199), where, in upholding the constitutionality of a Federal act making it a crime to utter counterfeit bills of lading purporting to represent interstate shipments, the Court said:

> Thus both in the pleadings and in the contention as summarized by the court below, it is insisted that as there was and could be no commerce in a fraudulent and fictitious bill of lading, therefore the power of Congress to regulate commerce could not embrace such pretended bill. But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject of commerce and its effect upon it. We say "mistakenly assumes", because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves.

Mr. SMITH. It is not necessary for me to go any further into that question. The application of the principle in the railroad case was carried to an absurd extent in affecting a railroad wholly within a State. In other words, the application of that policy practically nullified all State railroad commissions.

Mr. BORAH. Mr. President——

Mr. SMITH. I yield to the Senator from Idaho.

Mr. BORAH. The Shreveport case was referred to. The Supreme Court rendered an opinion in the Wisconsin case in which they distinguished the Shreveport case so as to limit the incident in which the intrastate business substantially interfered with the actual regulation of interstate commerce. In fact, the Shreveport case does nothing more than apply perfectly well-established principles to a particular state of facts. It in no sense holds that interstate commerce is subject to the control of regulation of Congress, unless as has always been true, it so interferes as to prevent the regulation of interstate commerce.

Mr. SMITH. Yes; but it went further. The policy, which was never, so far as I know, adversely passed upon by the Supreme Court, was that the revenues from interstate commerce were affected by the charges on intrastate commerce, and, therefore, they had a right to go within the States.

Mr. BORAH. I should like to see such a decision if one has been rendered.

Mr. SMITH. I said the Supreme Court never has passed upon that question so far as I know, and yet it is practiced by the Interstate Commerce Commission.

Mr. BORAH. Of course, if we are going to say that they have control of anything which affects interstate commerce, we must remember that all intrastate commerce affects interstate commerce. It is not sufficient that it shall affect interstate commerce, but it must affect it in such way as to interfere with the power to regulate interstate commerce before it becomes subject to control.

Mr. SMITH. That is my interpretation of what is meant by this very language. That was my idea when the Interstate Commerce Commission held that if it affects it, it ought to be made manifest that it was adversely affecting or obstructing interstate commerce. I take it that the administrators of the provisions of the bill would be subject to that very kind of conclusion. I would expect them to be. I change that expression. I hope they would be.

Mr. BORAH. Does the Senator say he expects it?

Mr. SMITH. No; I do not expect anything these days. I have gotten clear beyond that point now.

Mr. BORAH. The true rule is that Congress has the power to regulate interstate commerce, and it has no other power. If, in its effort to regulate interstate commerce, anything gets in its way, in the way so as to interfere with interstate commerce, it may remove it, but wholly for the purpose of exercising the power to regulate interstate commerce.

Mr. SMITH. That is true. I think that is sound, and I think that is the intent and purpose of this amendment, because in the interlacing of all business now, in the highly standardized condition of our organized society, the Senator knows and I know that there can be operated within a State things which would violently affect interstate commerce.

Mr. BORAH. Certainly; and when they do violently affect it, Congress may regulate that violence so as to remove it.

Mr. SMITH. Exactly. This bill gives someone the power to do that, and the courts are still here. If an attempt is made to go beyond those things that do affect interstate commerce so as to obstruct it, so as to make it inoperative, or so as to modify its operation, surely the courts are here to determine the matter.

Mr. BORAH. Yes; and they have just done so.

Mr. SMITH. Yes; so I hear.

Mr. BORAH. I expect to discuss this matter later, so I will not interfere with the Senator.

Mr. BYRD. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Virginia?

Mr. SMITH. I yield.

Mr. BYRD. Before the Senator leaves the ever-normal granary plan I should like to ask him a question about it. I do not think he has explained it fully. I should like to know to what extent it is anticipated that the Government will become the owner of large quantities of agricultural products.

Mr. Chester Davis said in his testimony that it is further recognized that the Government is likely to come into possession of substantial amounts of commodities, especially when a season of high yields, when loans are made, is followed by another season of high yields. As I recall, the Democratic Party and the Democratic platform severely condemned Mr. Hoover and the Republican Party because they purchased agricultural products. Is it the information of the Senator that it is the policy of the Department of Agriculture to hold large quantities of agricultural products, to be taken in through loans, I may say, that are made on such products in excess of the market value?

Mr. SMITH. Mr. President, I think there might come a time when that would be a very beneficial policy on the part of the Government, especially since we have launched out upon finding employment for people, creating jobs. I think it is very essential that when the price of our standard agricultural products manifestly falls below the cost of production the Government shall be able to acquire these products and substitute them in lieu of production. Whenever there is a surplus and the price goes below the cost of production, I think it would be pretty good policy to have established a reservoir into which the product could find its way for the benefit of the producer, and then be resold to him in lieu of production. When the season, over which the producer has no control, produces a greater amount than ordinarily is needed, instead of the speculator taking advantage of it and becoming the beneficiary, I think the Government could very well step in.

Mr. BYRD. The Senator a short while ago stated that no producer or farmer could be compelled to take a commodity in kind unless he voluntarily agreed to do so. I should like the Senator to show me that provision in the bill.

Mr. SMITH. It is implied rather than expressed.

Mr. BYRD. I made the statement that the Secretary of Agriculture absolutely controlled the matter. The Senator denied it, and said that a farmer could not be compelled to accept cotton for raising less cotton.

Mr. SMITH. I do not think he can.

Mr. BYRD. Where in the bill is it provided that the Secretary of Agriculture may pay a farmer in kind, without his consent, instead of paying him in cash?

Mr. SMITH. Under the form of the farmer's contract, he can specify his option.

Mr. BYRD. The Secretary can write any kind of a contract he wishes to write.

Mr. SMITH. And the farmer can reject any contract.

Mr. BYRD. The Senator knows that the farmer is not going to reject a contract with respect to getting benefit payments, so the entire matter is in the control of the Secretary of Agriculture.

Mr. SMITH. The Senator from Virginia has contradicted himself. If a farmer does not want payment in kind, but wants payment in money, and says, "I refuse to sign except for payment in money", and another farmer says, "I will take payment in kind", they are both at liberty to do so.

Mr. BYRD. The Senator well knows that the Secretary of Agriculture may prepare a contract in which he may say that benefit payments are to be made, not mentioning how, and the farmers will sign the contracts, because that is the only way in which they can get any benefit payments at all. The contention I make, and what I desire to have made clear, is that if it is the policy of the Government to pay the farmers in cotton, for example, instead of in cash, that can be done without the consent of the individual farmers.

Mr. SMITH. I do not think so.

Mr. BYRD. What is in the bill to prevent it, and will the Senator agree to an amendment to prevent it?

Mr. SMITH. What is in the bill is the refusal of the farmer to sign the contract.

Mr. BYRD. If he refuses to sign, then he will get nothing.

Mr. SMITH. Exactly; if he prefers having nothing to having cotton.

Mr. BYRD. That places the farmer in a very awkward position. If the Senator says the farmer should have the choice as to whether to receive cash or cotton, why not write into this proposed law an amendment to that effect?

Mr. SMITH. If the Senator will prepare such an amendment, I shall be very glad to have it incorporated in the bill, so as to make it distinct and clear that the farmer can receive payment in kind or in cash.

Mr. BYRD. The House bill authorizes the Secretary to pay the benefit either in kind or in cash.

Mr. SMITH. Yes. His contract would depend upon whether he was paid one or the other. Therefore the Secretary has to be authorized to do either. If he were restricted to cash, he could not pay in kind. If he were restricted to kind, he could not pay in cash; but he is authorized to pay in cash or in kind, as the farmer elects to take one or the other. If, however, the Senator desires an amendment to the effect that the farmer may accept cash or kind, I shall be very glad to have it incorporated in the bill.

Mr. BYRD. That is not the amendment I desire, Mr. President. I desire an amendment that a farmer shall not be compelled to accept payment in kind unless he so desires.

Mr. SMITH. I say, if the Senator from Virginia will write an amendment providing that the option shall be left with the farmer as to whether he shall accept payment in kind or in cash, I shall be very glad to accept it.

With respect to section 4, except for the fact that the House bill has paragraphed its amendments, the language is identical in both bills through line 16, on page 6, of the House bill, and the end of the sentence in line 1 on page 5 of the Senate bill.

Mr. BYRD. Mr. President, the Senator is now referring to section 4?

Mr. SMITH. Yes.

Mr. BYRD. It is my understanding that the Senator is comparing this bill not to the former bill but to the existing legislation?

Mr. SMITH. That is what I am doing.

Mr. BYRD. I think the Senator should make clear, as I suppose he will, that as compared to existing legislation the bill adds these words:

> In competition with or so as to burden, obstruct, or in any way affect——

Mr. SMITH. Yes.

Mr. BYRD. Those are new words, which are not in the existing legislation with regard to licensing.

Mr. SMITH. Let me find that provision in the original law.

Mr. BYRD. It is at the bottom of page 7, section 3, of the original law.

Mr. SMITH. The original language says:

> To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity.

No; this language is new, and it is in accordance, as I said a moment ago, with the language that was incorporated in the Transportation Act.

Mr. BYRD. I am not a lawyer, and neither, as I understand, is the Senator from South Carolina.

Mr. SMITH. No.

Mr. BYRD. But, in the Senator's opinion, does not this provision tremendously strengthen the licensing clause, because it says?—

> In competition with or so as to burden, obstruct, or in any way affect, interstate commerce.

Mr. SMITH. Oh, yes; unhesitatingly, I think so. I think it gives the Secretary the power, wherever he finds intrastate business burdening or affecting interstate business, so to declare.

Mr. BYRD. Let us take a concrete example. Suppose, for instance, a man raised a thousand baskets of strawberries, and sent them into a nearby city that happened to be within his State. That would be affecting interstate shipments of strawberries, because strawberries would be shipped into that city from out of the State. Is not that correct?

Mr. SMITH. I do not know that that could be considered as burdening or affecting interstate commerce. It would be so entirely within the right of an individual in a State, or a community within a State, that I do not think it could be so considered.

I cannot think of an illustration just now, but I presume there are plenty of intrastate transactions that do burden and obstruct interstate commerce. The Senator and I, in passing this legislation, if it shall pass, are going to leave to the courts and to the common sense and discretion of the Secretary of Agriculture and his assistants—I said "the common sense and discretion"—the extent to which this will go.

Mr. BYRD. But, regardless of that, there are certain fundamental principles on which the Senator and I should still stand.

Mr. SMITH. There are, and I stand on them.

Mr. BYRD. Would not the Senator be willing to modify that language? It now reads, "in any way affect." No language could be stronger than that—"in any way affect." It does not say that the handling of the commodity shall injure, necessarily, but that it shall "in any way affect interstate or foreign commerce."

Mr. SMITH. Mr. President, I think perhaps the language "in any way affect" is rather too liberal. I frankly admit that. If the language could be so framed as to indicate that the transaction must interfere with or obstruct interstate commerce, it would be better for us all.

Mr. BYRD. Will the Senator consider an amendment along that line?

Mr. SMITH. I will.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. KING in the chair). Does the Senator from South Carolina yield to the Senator from Idaho?

Mr. SMITH. I yield.

Mr. BORAH. I have before me the opinion of the Supreme Court rendered today, some paragraphs of which bear directly on this matter. It says:

> In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise.

In other words, when we use the words "interstate commerce" it does not add anything to the law to add to it the words "any commerce which affects interstate commerce", because each case must be determined as it arises, and the Court will determine for itself whether a given transaction affects interstate commerce to such an extent as to interfere with the regulation of interstate commerce.

In other words, if the term "all matters in interstate commerce" were employed, the idea would be expressed just as fully as by the use of the additional term which is inserted.

Mr. SMITH. Mr. President, as I said to the Senator, it is going to be left, as the National Recovery Act was left, to the final decision of the Court, and each individual case arising will be determined by the degree to which it does interfere with interstate commerce.

Mr. BORAH. When it gets before the Court the fact that we have used the term "and affects interstate commerce" will add nothing to the strength of the law.

Mr. SMITH. I agree with the Senator. I think that is correct.

Mr. VANDENBERG. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Michigan?

Mr. SMITH. I yield.

Mr. VANDENBERG. In connection with section 4, which the Senator has been explaining, may I inquire what latitude is involved in the licenses which are to be issued to processors? Can the Secretary of Agriculture control all phases of the processor's business and operation under the licenses?

Mr. SMITH. What does the Senator mean by "all phases"?

Mr. VANDENBERG. I was challenged by a circular which comes to hand from the law committee of the American Newspaper Publishers Association, for example, which says that under this authority the Secretary of Agriculture can pass upon all the advertising campaigns of a processor, that he can decide that a processor is not entitled to include advertising expense within a legitimate market price. Does the Senator believe that the power to license a processor is an all-inclusive power, which the Secretary can use in respect to all of the activities of the processor?

Mr. SMITH. As I contemplate it, if we attribute to the Secretary of Agriculture and his assistants common decency, we would think that he would license processors for the purpose of carrying out the marketing agreements entered into by producers, and beyond that, have nothing to do with his license restrictions.

Mr. VANDENBERG. I do not want the Senator to leave me in the position of having suggested that the Secretary would go beyond common decency. In the Secretary's view of the ordered and regimented society, which he conscientiously believes, apparently, to be essential to the welfare of American life, he might decently, from his viewpoint, go infinitely further than the able Senator from South Carolina would want to go.

Mr. SMITH. I may explain the object as I see it. Let us assume a marketing agreement entered into by producers. They go into the details and have a meeting with the processors, which I understand has been done in nearly every case; and they work out a program, as was done in the case of tobacco, by which the processor or distributor conforms to the terms of the marketing agreement entered into by the producers. He has to pay them a certain price, or come within certain rules. What he does with the product after he gets it, or how he goes about disposing of that which he has brought from the producer is, as I understand, beyond the purview of license. That enters into another phase which does not concern the producer and the processor and distributor. The object here is to get for the producer, as near as may be, a just return for what he sells in terms of what he buys, and beyond that there is no concern.

Mr. VANDENBERG. I understand that to be the objective.

Mr. SMITH. Yes.

Mr. VANDENBERG. But textually I am asking the Senator whether, under the language which he is asking the Senate to approve, the license which the Secretary of Agriculture can put upon any processor is a license so broad that he can virtually exercise any power or authority he wants to over the processor in respect to the merchandising of the particular commodity which is processed.

Mr. SMITH. No; I do not so understand. In the first place, I do not think the Secretary of Agriculture would want to burden himself with following up what the processor does after he has conformed to the contract implied in the license and in the marketing agreement.

Mr. VANDENBERG. Suppose the Secretary of Agriculture should move on to some other high position in the Government and the Under Secretary should become Secretary?

Mr. SMITH. We will not discuss that question.

Mr. VANDENBERG. How would the Senator like to have these powers administered then?

Mr. SMITH. I turn over all my interest to the Senator from Michigan. He is welcome to draw any deduction or induction or abduction. [Laughter.]

Mr. VANDENBERG. Does the Senator think that hazard is sufficiently imminent so that we ought to protect against it in this bill?

Mr. SMITH. I noticed that some of the Senators were willing to take the hazard in the first place, and they are welcome to take it in the second place.

Mr. VANDENBERG. I should like to ask the Senator one other question in regard to this section. I should like to know why sugar beets are chosen as one of the specific commodities which are not exempted from the license language on page 6?

Mr. SMITH. I think the Secretary and his assistants have taken out those raw materials which were notoriously below the parity price, where the producers were not getting the parity price, and where a processing tax could not be so readily available as when applied to the standard articles, such as cotton, and corn, and wheat.

Mr. VANDENBERG. We have the Jones-Costigan Act to deal with the sugar situation, and I am wondering why it is not left to the Jones-Costigan Act. I see one of the able authors of that act upon his feet. Perhaps he might be permitted to respond.

Mr. COSTIGAN. Mr. President——

The PRESIDING OFFICER (Mr. MOORE in the chair). Does the Senator from South Carolina yield to the Senator from Colorado?

Mr. SMITH. I yield.

Mr. COSTIGAN. I did not rise to respond to that inquiry, but to supplement the question of the able Senator from Michigan by asking why sugarcane is not included with sugar beets in the clause mentioned by the Senator from Michigan?

Mr. SMITH. I am not prepared to make a statement, save to refer to just what was brought out before the committee. My understanding is that the prices of the sugar beets and wool were so far below anything like parity that a processing tax was not indicated as being easily executed. They could adjust the difference more satisfactorily than through an attempt to put on a processing tax, because it must be evident to the Senator that if they were as far below the parity as indicated by the report, a processing tax would practically eliminate them.

Mr. COSTIGAN. My suggestion to the able Senator from South Carolina is that either sugar beets be eliminated from line 16, page 5, of the House bill or sugarcane be added. It is evident that sugar produced from cane and sugar produced from beets are not distinguishable.

Mr. SMITH. No.

Mr. COSTIGAN. It is also well known that in marketing sugar produced from diverse sources, beet and cane, natural marketing areas are frequently invaded, so that sugar produced from cane is frequently sold in beet-sugar regions, and vice versa. Therefore, marketing agreements are especially desirable to eliminate needless and wasteful cross-transportation charges.

I wish at this early stage in the consideration of the bill to suggest to the able Senator from South Carolina that sugarcane be added or sugar beets omitted, particularly since the courts under known commercial conditions may reasonably hold any such classification, distinguishing between closely allied basic commodities, to be an arbitrary, unwarranted, and illegal discrimination.

Mr. SMITH. Let me suggest to the Senator that he prepare an amendment to that effect, and I shall ask the Department to give me a specific statement as to what they have found in trying to administer the law.

Mr. COSTIGAN. I thank the Senator. That is precisely my intention.

Mr. VANDENBERG. Mr. President, if the Senator will permit me, I am still without an answer to my question as to why sugar beets should be in the bill at all, in view of the existence of the Jones-Costigan Act, and I am wondering whether the Senator will not permit the Senator from Colorado to give me his judgment upon that question?

Mr. SMITH. I shall be glad to yield for that purpose.

Mr. COSTIGAN. I had nothing to do with the preparation of the bill before us. My attention has been directed only to the clause about which I have expressed myself. I prefer at this time to reserve any further answer to the question of the Senator from Michigan.

Mr. SMITH. Mr. President, I wish to call attention to another phase of the matter. The Senator from Michigan and the Senator from Colorado were speaking about articles being licensed rather than being brought under the processing tax provision. These articles are produced in a territory so limited in extent, and in a volume so small, comparatively, that it is more convenient, according to the statement made by the Department, to handle them by marketing agreements and licenses than by a processing tax.

The fifth clause provides that no license can be issued except in aid of an executed or proposed marketing agreement. Since from line 19 on page 4 through the end of the sentence in line 1 on page 5 of the Senate bill there is already imposed a similar restriction with respect to clause (2) and clause (3) licenses, this new sentence affects only the clause (1) licenses, which deal solely with unfair trade practices and charges.

The sixth clause exempts retailers—with the exception of retailers of milk—from the compulsory licensing provisions.

There was considerable propaganda to the effect that under the terms of the original law and the first proposed amendment, the Secretary should license anyone handling agricultural products, wherever they went. The proposed amendment does not permit a retailer to be licensed unless the retailer assumes the function of a wholesaler—that is, a retailer selling to a retailer—but so long as he sells in retail no license shall be applied.

Mr. VANDENBERG. Mr. President, may I ask the Senator whether the phrase "unfair practices" is defined anywhere in the bill?

Mr. SMITH. No; I think not.

Mr. VANDENBERG. What does the phrase "unfair practices" mean?

Mr. SMITH. The Senator can answer his own question just as well as I can. It is a pretty broad expression. If it were capable of definition, I think it should be incorporated in the bill; but the Senator recognizes that whenever we begin to enumerate the specific things to be exempted or included we cannot go beyond them, so are obliged to leave it to the judgment of those who are to administer this law to decide whether practices are manifestly unfair in common honesty and in common dealing.

Mr. VANDENBERG. Does the Senator think we have constitutional authority to delegate to the Secretary of Agriculture the right to define an unfair practice and then deal with it by way of penalty through a license?

Mr. SMITH. Yes; I think we have the power of creating a court, and we come very near doing it in this bill. Congress has the power to create inferior courts and invest them with all the power necessary.

Mr. VANDENBERG. This will not be an inferior court.

Mr. SMITH. Mr. President, the paragraph designated as (B), beginning in line 1, page 8, of House bill 8052, is identical with the paragraph constituting lines 4, through 18, on page 5 of Senate bill 1807.

I do not think that needs any explanation.

Section 5 of House bill 8052 corresponds to and is substantially identical with section 4 of Senate bill 1807, and constitutes the so-called "books and records section."

There has been a good deal of comment about that. The Senate bill provided for an examination of books and papers pertinent to the question. I think synonymous provision is made in the House bill so that the two are practically the same in this respect.

Mr. LEWIS. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. LEWIS. I should like the judgment of the Senator from South Carolina, as Chairman of the Committee on Agriculture and Forestry, who, as we all know, has been watching all legislation touching agriculture, and also the judgment of the Senator from Alabama [Mr. BANKHEAD] on this question:

Is it not now worthy of consideration whether we should go farther in our consideration of this bill at the present time? The Supreme Court of the United States seems to have rendered an opinion which, from what we learn of it, indicates that the foundation on which this proposed legislation is based is open to the serious question of unconstitutionality, certain features of it coming wholly within the decision as we now know it to have been rendered. Would it not be well, before we go farther with this bill, that it be recommitted to the committee, or for a while suspended, until complete consideration by the Committee on Agriculture and Forestry can be given as to how far the provisions of this bill are within the opinion of the Supreme Court, or how far they are without it, and thus avoid the possible passage in this body of a measure which may in a very short while be under question, under suspicion, under charge, under great doubt, and possibly come within the maledictions of the Supreme Court in declaring it invalid? Would it not be well for us now to consider those phases of the subject?

Mr. SMITH. Mr. President, now that this bill has been reported, individually I prefer to have this august body of lawyers consider it in all its legal and constitutional phases rather than send it back to the committee with its limited knowledge of legal lore. I make no reflection on the lawyers on the committee, but while there are some of us on the committee who make assault with intent to be lawyers, and some of us may be lawyers, I think it is better, now that we have the bill before us and have the decision of the Supreme Court before us, to test each one of the provisions of the substantive law as well as these implementing amendments. I prefer, for the sake of the agricultural interests of America, to go on, and, so far as we can, intervene and give them some hope that from now on they will be enabled under law to participate to some degree at least in the wealth they produce and not to continue to be in the line of least resistance and to be exploited by all the profiteers and manufacturers who handle the farmers' products.

Mr. McNARY. Mr. President, the Senator from Illinois has made a proposal which I thought of making, twice within the last hour. A number of Senators spoke to me about the advisability of recommitting the bill to the committee for its study in connection with the decision handed down by the Supreme Court today in connection with the N. R. A.

With the slight knowledge I have of the decision of the Supreme Court, if I have been correctly informed, it is my judgment that the delegation of power without any proper definition is just as apparent in the agricultural-adjustment bill as in the N. R. A. Act. I have not had time to read the decision, and I may be mistaken.

Would it not be helpful and fair to Congress and fair to the farmers of the country to recommit the bill to the committee for the purpose of study? Would we not gain time thereby?

Mr. SMITH. I think we will gain time if we shall continue to consider the bill on the floor of the Senate, and, in the light of the decision of the Supreme Court, either amend or eliminate those parts of the bill which in the opinion of a majority of the Senators are unconstitutional, rather than send the bill back to the committee for its discussion, because the same questions will again be gone over when the bill comes back to the floor.

Mr. McNARY. I think there is question whether the pending measure does not come within the provisions of the decision handed down today; and, inasmuch as there is other pending legislation which may take the place of that which is now before us, I believe it is in the interest of the farmers of the country and of Congress that this bill be recommitted to the committee for its study, in the light of the decision of the Supreme Court. I do not wish to take it away from the chairman of the committee. If I were chairman of the committee I should do it voluntarily, and I should feel almost under the necessity of moving in that direction; but, in justice to the chairman, I hesitate at this time to do so.

Mr. SMITH. Mr. President, I desire to state that I do not think the terms of this bill are comparable to the terms of the N. R. A. Act.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Idaho?

Mr. SMITH. I yield.

Mr. BORAH. Would not the Senator be willing to have the Senate take a recess until tomorrow, so as to give us a chance to study the bill in the light of the decision of the Supreme Court, instead of sending the bill back to the committee?

Mr. SMITH. Mr. President, I should be perfectly willing to take that course.

Mr. ROBINSON. Mr. President, why not let the Senator from South Carolina proceed with his explanation of the amendments? When he shall have concluded that explanation—which will give the Senate, if Senators will listen to it, some understanding of the purposes and effect of the bill—it will be time enough to discuss taking a recess or an adjournment.

I think the Senator should have an opportunity to conclude his discussion of the amendments. He has been interrupted—properly, of course—a great many times. When he shall have concluded his explanation of the bill we can then decide whether or not we wish to take a recess or an adjournment.

Mr. SMITH. Mr. President, I think perhaps the suggestion of the Senator from Arkansas is the better plan; and, if I am permitted, I will go through the amendments, so that they will be in the RECORD, with the explanation which has been prepared, and those who desire to examine the decision of the Supreme Court will be prepared tomorrow.

Mr. BORAH. Mr. President, the questions involved in some of these amendments were decided by the Supreme Court.

DECISIONS OF SUPREME COURT IN N. R. A. AND FRAZIER-LEMKE LAW CASES (S. DOC. NO. 65)

Mr. BLACK. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. BLACK. It has been suggested by a number—but I do not know that the suggestion has as yet been carried out—that the opinions should be placed in the RECORD, and, if the Senator from South Carolina will yield for that purpose, I will ask unanimous consent to have inserted in the RECORD both opinions of the Supreme Court of the United States in the N. R. A. cases.

Mr. BANKHEAD. Were there two opinions?

Mr. BLACK. I might state that there were two opinions, the opinion of the Court and concurring opinions by Mr. Justice Cardozo and Mr. Justice Stone, who added some views to those of the other justices of the Court. I ask that both opinions may be inserted in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KING. Mr. President, will the Senator from South Carolina yield?

Mr. SMITH. I yield.

Mr. KING. Does the request of the Senator from Alabama also include the decision of the Court on the so-called "Frazier-Lemke Act"?

Mr. BLACK. I did not include that in my request, but I think it would be wise to do so, and I shall be glad to add also the request that the opinion of the Court on the Frazier-Lemke Act be inserted in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBINSON. What was the opinion of the Court in that case?

Mr. KING. The act was declared unconstitutional.

Mr. BLACK. Mr. President, it has been suggested—I do not know whether it would be desirable or not, but I suggest it for consideration—that there will be so many requests for the opinion of the Supreme Court in the N. R. A. case that it ought also to be printed as a public document, and I make that request, in order to test whether Senators think that is proper. I may add that the estimate of cost of printing the opinions in the RECORD, as required by the rules of the Joint Committee on Printing, has been furnished to the committee.

Mr. BYRD. Is the opinion a long one?

Mr. BORAH. Mr. President, as I understand, there will be plenty of copies printed by the Supreme Court itself.

Mr. BLACK. If copies will be available from that source, then, I will withdraw that part of my request.

Mr. BYRD. Is the opinion a long one, I should like to ask the Senator? I was just wondering whether it would not be well to have the opinion read by the clerk, if it is not too long.

Mr. BLACK. It would probably take an hour or more to read it.

Mr. ROBINSON. It would take, perhaps, 2 hours.

Mr. BYRD. Very well.

Mr. BLACK subsequently said: Mr. President, since I was on my feet a few moments ago, it has been ascertained that the number of printed copies of the opinions relative to the N. R. A. law available to the Supreme Court are very limited, and a number of Senators desire that the Supreme Court opinions to which I have referred be made a Senate document. I therefore ask unanimous consent that it be so done.

The PRESIDING OFFICER. Without objection, it is so ordered.

The opinions of the Supreme Court of the United States which were ordered to be printed in the RECORD are as follows:

[Supreme Court of the United States. Nos. 854 and 864. October term, 1934. 854. *A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, petitioners*, v. *The United States of America*, 864. *The United States of America, petitioner*, v. *A. L. A. Schechter Poultry Corporation, Martin Schechter, Alex Schechter, and Aaron Schechter*. On writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioners in no. 854 were convicted in the District Court of the United States for the Eastern District of New York on 18 counts of an indictment charging violations of what is known as the "Live Poultry Code",[1] and on an additional count for conspiracy to commit such violations.[2] By demurrer to the indictment and appropriate motions on the trial the defendants contended (1) that the code had been adopted pursuant to an unconstitutional delegation by Congress of legislative power; (2) that it attempted to regulate intrastate transactions which lay outside the authority of Congress; and (3) that in certain provisions it was repugnant to the due process clause of the fifth amendment.

The circuit court of appeals sustained the conviction on the conspiracy count and on 16 counts for violation of the code, but reversed the conviction on 2 counts which charged violation of

[1] The full title of the code is Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and About the City of New York.

[2] The indictment contained 60 counts, of which 27 counts were dismissed by the trial court, and on 14 counts the defendants were acquitted.

requirements as to minimum wages and maximum hours of labor, as these were not deemed to be within the congressional power of regulation. On the respective applications of the defendants (no. 854) and of the Government (no. 864) this court granted writs of certiorari April 15, 1935.

New York City is the largest live-poultry market in the United States. Ninety-six percent of the live poultry there marketed comes from other States. Three-fourths of this amount arrives by rail and is consigned to commission men or receivers. Most of these freight shipments (about 75 percent) come in at the Manhattan Terminal of the New York Central Railroad, and the remainder at one of the four terminals in New Jersey serving New York City. The commission men transact by far the greater part of the business on a commission basis, representing the shippers as agents, and remitting to them the proceeds of sale, less commissions, freight, and handling charges. Otherwise, they buy for their own account. They sell to slaughterhouse operators, who are also called market men.

The defendants are slaughterhouse operators of the latter class. A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market are corporations conducting wholesale poultry slaughterhouse markets in Brooklyn, New York City. Joseph Schechter operated the latter corporation and also guaranteed the credits of the former corporation which was operated by Martin, Alex, and Aaron Schechter. Defendants ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the city, but occasionally they purchase from commission men in Philadelphia. They buy the poultry for slaughter and resale. After the poultry is trucked to their slaughterhouse markets in Brooklyn, it is there sold, usually within 24 hours, to retail poultry dealers and butchers, who sell directly to consumers. The poultry purchased from defendants is immediately slaughtered, prior to delivery, by shochtim in defendants' employ. Defendants do not sell poultry in interstate commerce.

The live-poultry code was promulgated under section 3 of the National Industrial Recovery Act.[3] That section—the pertinent provisions of which are set forth in the margin[4]—authorizes the President to approve "codes of fair competition." Such a code may be approved for a trade or industry, upon application by one or more trade or industrial associations or groups, if the President finds (1) that such associations or groups "impose no inequitable restrictions on admission to membership therein and are truly representative", and (2) that such codes are not designed "to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy" of title I of the act. Such codes "shall not permit monopolies or monopolistic practices." As a condition of his approval, the President may "impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared." Where such a code has not been approved, the President may prescribe one, either on his own motion or on complaint. Violation of any provision of a code (so approved or prescribed) "in any transaction in or affecting interstate or foreign commerce" is made a misdemeanor punishable by a fine of not more than $500 for each offense, and each day the violation continues is to be deemed a separate offense.

The "live-poultry code" was approved by the President on April 13, 1934. Its divisions indicate its nature and scope. The code has eight articles entitled (1) purposes, (2) definitions, (3) hours, (4) wages, (5) general labor provisions, (6) administration, (7) trade-practice provisions, and (8) general.

The declared purpose is "to effect the policies of title I of the National Industrial Recovery Act." The code is established as "a code for fair competition for the live poultry industry of the metropolitan area in and about the city of New York." That area is described as embracing the five boroughs of New York City, the counties of Rockland, Westchester, Nassau, and Suffolk in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut.

The "industry" is defined as including "every person engaged in the business of selling, purchasing for resale, transporting, or handling and/or slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form", and such "related branches" as may from time to time be included by amendment. Employers are styled "members of the industry", and the term employee is defined to embrace "any and all persons engaged in the industry, however compensated", except "members."

The code fixes the number of hours for workdays. It provides that no employee, with certain exceptions, shall be permitted to work in excess of forty (40) hours in any one week, and that no employee, save as stated, "shall be paid in any pay period less than at the rate of fifty (50) cents per hour." The article containing "general labor provisions" prohibits the employment of any person under 16 years of age, and declares that employees shall have the right of "collective bargaining", and freedom of choice with respect to labor organizations, in the terms of section 7 (a) of the act. The minimum number of employees, who shall be employed by slaughterhouse operators, is fixed, the number being graduated according to the average volume of weekly sales.

Provision is made for administration through an "industry adivsory committee", to be selected by trade associations and members of the industry, and a "code supervisor" to be appointed, with the approval of the committee, by agreement between the Secretary of Agriculture and the Administrator for Industrial Recovery. The expenses of administration are to be borne by the members of the industry proportionately upon the basis of volume of business, or such other factors as the advisory committee may deem equitable, "subject to the disapproval of the Secretary and/or Administrator."

The seventh article, containing "trade practice provisions", prohibits various practices which are said to constitute "unfair methods of competition." The final article provides for verified reports, such as the Secretary or Administrator may require, "(1) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and (2) for the determination by the Secretary or Administrator of the extent to which the declared policy of the act is being effectuated by this code." The members of the industry are also required to keep books and records which "will clearly reflect all financial transactions of their respective businesses and the financial condition thereof", and to submit weekly reports "showing the range of daily prices and volume of sales" for each kind of produce.

The President approved the code by an Executive order in which he found that the application for his approval had been duly made in accordance with the provisions of title I of the National Industrial Recovery Act, that there had been due notice and hearings, that the code constituted "a code of fair competition" as contemplated by the act and complied with its pertinent provisions, including clauses (1) and (2) of subsection (a) of section 3 of title I; and that the code would tend "to effectuate the policy of Congress as declared in section 1 of title I".[5] The Executive order

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[3] Act of June 16, 1933, c. 90 (48 Stat. 195, 196; 15 U. S. C. 703).

[4] Codes of Fair Competition:

"SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

"(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended.

"(c) The several District Courts of the United States are hereby invested with jurisdictions to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

"(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

"(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense."

[5] The Executive order is as follows:

"EXECUTIVE ORDER

"Approval of code of fair competition for the live-poultry industry of the metropolitan area in and about the city of New York.

"Whereas, the Secretary of Agriculture and the Administrator of the National Industrial Recovery Act having rendered their

also recited that the Secretary of Agriculture and the Administrator of the National Industrial Recovery Act had rendered separate reports as to the provisions within their respective jurisdictions. The Secretary of Agriculture reported that the provisions of the code "establishing standards of fair competition (a) are regulations of transactions in or affecting the current of interstate and/or foreign commerce and (b) are reasonable", and also that the code would tend to effectuate the policy declared in title I of the act, as set forth in section 1. The report of the Administrator for Industrial Recovery dealt with wages, hours of labor, and other labor provisions.[6]

Of the 18 counts of the indictment upon which the defendants were convicted, aside from the count for conspiracy, 2 counts charged violation of the minimum-wage and maximum-hour provisions of the code and 10 counts were for violation of the requirement (found in the "trade-practice provisions") of "straight killing." This requirement was really one of "straight" selling. The term "straight killing" was defined in the code as "the practice of requiring persons purchasing poultry for resale to accept the run of any half coop, coop, or coops, as purchased by slaughterhouse operators, except for culls."[7] The charges in the 10 counts, respectively, were that the defendants in selling to retail dealers and butchers had permitted "selections of individual chickens taken from particular coops and half coops."

Of the other 6 counts, 1 charged the sale to a butcher of an unfit chicken; 2 counts charged the making of sales without having the poultry inspected or approved in accordance with regulations or ordinances of the city of New York; 2 counts charged the making of false reports or the failure to make reports relating to the range of daily prices and volume of sales for certain periods; and the remaining count was for sales to slaughterers or dealers who were without licenses required by the ordinances and regulations of the city of New York.

First: Two preliminary points are stressed by the Government with respect to the appropriate approach to the important questions presented. We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power.[8] The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the National Government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extraconstitutional authority were anticipated and precluded by the explicit terms of the tenth amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

The further point is urged that the national crisis demanded a broad and intensive cooperative effort by those engaged in trade and industry, and that this necessary cooperation was sought to be fostered by permitting them to initiate the adoption of codes. But the statutory plan is not simply one for voluntary effort. It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities. It involves the coercive exercise of the law-making power. The codes of fair competition which the statute attempts to authorize are codes of laws. If valid, they place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent. Violations of the provisions of the codes are punishable as crimes.

Second. The question of the delegation of legislative power. We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question (*Panama Refining Co.* v. *Ryan* (293 U. S. 388)). The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives" (art. I, sec. 1). And the Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution" its general powers (art. I, sec. 8, par. 18). The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the National Legislature cannot deal directly. We pointed out in the *Panama Co. case* that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained (id., p. 421).

Accordingly, we look to the statute to see whether Congress has overstepped these limitations; whether Congress in authorizing "codes of fair competition" has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others.

The aspect in which the question is now presented is distinct from that which was before us in the case of the *Panama Co.* There the subject of the statutory prohibition was defined. (National Industrial Recovery Act, sec. 9 (c).) That subject was the transportation in interstate and foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount permitted by State authority. The question was with respect to the range of discretion given to the President in prohibiting that transportation (id., pp. 414, 415, 430). As to the "codes of fair competition", under section 3 of the act, the question is more fundamental. It is whether there is any adequate definition of the subject to which the codes are to be addressed.

What is meant by "fair competition" as the term is used in the act? Does it refer to a category established in the law, and is the authority to make codes limited accordingly? Or is it used as a convenient designation for whatever set of laws the formulators of a code for a particular trade or industry may propose and the President may approve (subject to certain restrictions), or the President may himself prescribe, as being wise and beneficent provisions for the government of the trade or industry in order to accomplish the broad purposes of rehabilitation, correction, and expansion which are stated in the first section of title I?[9]

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separate reports and recommendations and findings on the provisions of said code, coming within their respective jurisdictions, as set forth in the Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933, and Executive Order No. 6345 of Oct. 20, 1933, as amended by Executive Order No. 6551 of Jan. 8, 1934;

"*Now, therefore,* I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby find that:

"1. An application has been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a code of fair competition for the live-poultry industry in the metropolitan area in and about the city of New York; and

"2. Due notice and opportunity for hearings to interested parties have been given pursuant to the provisions of the act and regulations thereunder; and

"3. Hearings have been held upon said code, pursuant to such notice and pursuant to the pertinent provisions of the act and regulations thereunder; and

"4. Said code of fair competition constitutes a code of fair competition, as contemplated by the act and complies in all respects with the pertinent provisions of the act, including clauses (1) and (2) of subsection (a) of section 3 of title I of the act; and

"5. It appears, after due consideration, that said code of fair competition will tend to effectuate the policy of Congress as declared in section 1 of title I of the act.

"Now, therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby approve said Code of Fair Competition for the Live Poultry Industry in the metropolitan area in and about the city of New York.

"FRANKLIN D. ROOSEVELT,
"*President of the United States.*"

"THE WHITE HOUSE, *April 13, 1934.*"

[6] The Administrator for Industrial Recovery stated in his report that the code had been sponsored by trade associations representing about 350 wholesale firms, 150 retail shops, and 21 commission agencies; that these associations represented about 90 percent of the live poultry industry by numbers and volume of business; and that the industry as defined in the code supplied the consuming public with practically all the live poultry coming into the metropolitan area from 41 States and transacted an aggregate annual business of approximately $90,000,000. He further said that about 1,610 employees were engaged in the industry; that it had suffered severely on account of the prevailing economic conditions and because of unfair methods of competition and the abuses that had developed as a result of the "uncontrolled methods of doing business"; and that these conditions had reduced the number of employees by approximately 40 percent. He added that the report of the Research and Planning Division indicated that the code would bring about an increase in wages of about 20 percent in this industry and an increase in employment of 19.2 percent.

[7] The prohibition in the code (art. VII, sec. 14) was as follows: "Straight killing: The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds."

[8] See *Ex parte Milligan* (4 Wall. 2, 120, 121); *Home Building & Loan Association* v. *Blaisdell* (290 U. S. 398, 426).

[9] That section, under the heading "Declaration of Policy", is as follows:

"SECTION 1. A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and under-

The act does not define "fair competition." "Unfair competition", as known to the common law, is a limited concept. Primarily, and strictly, it relates to the palming off of one's goods as those of a rival trader (*Goodyear Manufacturing Co.* v. *Goodyear Rubber Co.*, (128 U. S. 598, 604); *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict* (198 U. S. 118, 140); *Hanover Milling Co.* v. *Metcalf* (240 U. S. 403, 413)). In recent years its scope has been extended. It has been held to apply to misappropriation as well as misrepresentation, to the selling of another's goods as one's own—to misappropriation of what equitably belongs to a competitor (*International News Service* v. *Associated Press* (248 U. S., 215, 241, 242)). Unfairness in competition has been predicated of acts which lie outside the ordinary course of business and are tainted by fraud, or coercion, or conduct otherwise prohibited by law[10] (*id.*, p. 258). But it is evident that in its widest range, "unfair competition", as it has been understood in the law, does not reach the objectives of the codes which are authorized by the National Industrial Recovery Act. The codes may, indeed, cover conduct which existing law condemns, but they are not limited to conduct of that sort. The Government does not contend that the act contemplates such a limitation. It would be opposed both to the declared purposes of the act and to its administrative construction.

The Federal Trade Commission Act (sec. 5)[11] introduced the expression "unfair methods of competition", which were declared to be unlawful. That was an expression new in the law. Debate apparently convinced the sponsors of the legislation that the words "unfair competition", in the light of their meaning at common law, were too narrow. We have said that the substituted phrase has a broader meaning, that it does not admit of precise definition, its scope being left to judicial determination as controversies arise (*Federal Trade Commission* v. *Raladam Co.* (283 U. S. 643, 648, 649); (*Federal Trade Commission* v. *Keppel* (291 U. S. 304, 310–312)). What are "unfair methods of competition" are thus to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest (*Federal Trade Commission* v. *Beech-Nut Co.* (257 U. S. 441, 453); *Federal Trade Commission* v. *Klesner* (280 U. S. 19, 27, 28); *Federal Trade Commission* v. *Raladam Co., supra; Federal Trade Commission* v. *Keppel, supra; Federal Trade Commission* v. *Algoma Co.* (291 U. S. 67, 73)). To make this possible, Congress set up a special procedure. A commission, a quasi-judicial body, was created. Provision was made for formal complaint, for notice and hearing, for appropriate findings of fact supported by adequate evidence, and for judicial review to give assurance that the action of the commission is taken within its statutory authority (*Federal Trade Commission* v. *Raladam Co., supra; Federal Trade Commission* v. *Klesner*, supra).[12]

In providing for codes, the National Industrial Recovery Act dispenses with this administrative procedure and with any administrative procedure of an analogous character. But the difference between the code plan of the Recovery Act and the scheme of the Federal Trade Commission Act lies not only in procedure but in subject matter. We cannot regard the "fair competition" of the codes as antithetical to the "unfair methods of competition" of the Federal Trade Commission Act. The "fair competition" of the codes has a much broader range and a new significance. The Recovery Act provides that it shall not be construed to impair the powers of the Federal Trade Commission, but, when a code is approved, its provisions are to be the "standards of fair competition" for the trade or industry concerned, and any violation of such standards in any transaction in or affecting interstate or foreign commerce is to be deemed "an unfair method of competition" within the meaning of the Federal Trade Commission Act (sec. 3 (b)).

For a statement of the authorized objectives and content of the "codes of fair competition" we are referred repeatedly to the "declaration of policy" in section 1 of title I of the Recovery Act. Thus, the approval of a code by the President is conditioned on his finding that it "will tend to effectuate the policy of this title" (sec. 3 (a)). The President is authorized to impose such conditions "for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared" (id.). The "policy herein declared" is manifestly that set forth in section 1. That declaration embraces a broad range of objectives. Among them we find the elimination of "unfair competitive practices." But even if this clause were to be taken to relate to practices which fall under the ban of existing law, either common law or statute, it is still only one of the authorized aims described in section 1. It is there declared to be "the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."[13]

Under section 3, whatever "may tend to effectuate" these general purposes may be included in the "codes of fair competition." We think the conclusion is inescapable that the authority sought to be conferred by section 3 was not merely to deal with "unfair competitive practices" which offend against existing law, and could be the subject of judicial condemnation without further legislation, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficent measures for the government of trade and industries in order to bring about their rehabilitation, correction, and development, according to the general declaration of policy in section 1. Codes of laws of this sort are styled "codes of fair competition."

We find no real controversy upon this point, and we must determine the validity of the code in question in this aspect. As the Government candidly says in its brief: "The words 'policy of this title' clearly refer to the 'policy' which Congress declared in the section entitled 'declaration of policy'—section 1. All of the policies there set forth point toward a single goal—the rehabilitation of industry and the industrial recovery which unquestionably was the major policy of Congress in adopting the National Industrial Recovery Act." And that this is the controlling purpose of the code now before us appears both from its repeated declarations to that effect and from the scope of its requirements. It will be observed that its provisions as to the hours and wages of employees and its "general labor provisions" were placed in separate articles, and these were not included in the article on "trade practice provisions" declaring what should be deemed to constitute "unfair methods of competition." The Secretary of Agriculture thus stated the objectives of the live-poultry code in his report to the President, which was recited in the Executive order of approval:

"That said code will tend to effectuate the declared policy of title I of the National Industrial Recovery Act as set forth in section 1 of said act in that the terms and provisions of such code tend to: (a) Remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry and to conserve natural resources."

The Government urges that the codes will "consist of rules of competition deemed fair for each industry by representative members of that industry—by the persons most vitally concerned and most familiar with its problems." Instances are cited in which Congress has availed itself of such assistance; as, for example, in the exercise of its authority over the public domain, with respect to the recognition of local customs or rules of miners as to mining claims,[14] or, in matters of a more or less technical nature, as in designating the standard height of drawbars.[15] But would it be seriously contended that Congress could delegate its legislative

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mines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

[10] See cases collected in Nims on Unfair Competition and Trade Marks, ch. I, sec. 4, p. 19, and ch. XIX.

[11] Act of September 26, 1914, c. 311, 38 Stat. 717, 719, 720.

[12] The Tariff Act of 1930 (sec. 337, 46 Stat. 703), like the Tariff Act of 1922 (sec. 316, 42 Stat. 943), employs the expressions "unfair methods of competition" and "unfair acts" in the importation of articles into the United States, and in their sale, "the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States." Provision is made for investigation and findings by the Tariff Commission, for appeals upon questions of law to the United States Court of Customs and Patent Appeals, and for ultimate action by the President when the existence of any "such unfair method or act" is established to his satisfaction.

[13] See note 9.

[14] Act of July 26, 1866 (ch. 262, 14 Stat. 251); *Jackson* v. *Roby* (109 U. S. 440, 441); *Erhardt* v. *Boaro* (113 U. S. 527, 535); *Butte City Water Co.* v. *Baker* (196 U. S. 119, 126).

[15] Act of Mar. 2, 1893 (ch. 196, 27 Stat. 531); *St. Louis & Iron Mountain Railway Co.* v. *Taylor* (210 U. S. 281, 286).

authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industries? Could trade or industrial associations or groups be constituted legislative bodies for that purpose because such associations or groups are familiar with the problems of their enterprises? And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section 1 of title I? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress.

The question, then, turns upon the authority which section 3 of the Recovery Act vests in the President to approve or prescribe. If the codes have standing as penal statutes, this must be due to the effect of the Executive action. But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry. See *Panama Refining Co.* v. *Ryan, supra,* and cases there reviewed.

Accordingly we turn to the Recovery Act to ascertain what limits have been set to the exercise of the President's discretion. First, the President, as a condition of approval, is required to find that the trade or industrial associations or groups which propose a code, "impose no inequitable restrictions on admission to membership" and are "truly representative." That condition, however, relates only to the status of the initiators of the new laws and not to the permissible scope of such laws. Second, the President is required to find that the code is not "designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them." And to this is added a proviso that the code "shall not permit monopolies or monopolistic practices." But these restrictions leave virtually untouched the field of policy envisaged by section 1, and in that wide field of legislative possibilities the proponents of a code refraining from monopolistic designs may roam at will, and the President may approve or disapprove their proposals as he may see fit. That is the precise effect of the further finding that the President is to make—that the code "will tend to effectuate the policy of this title." While this is called a finding, it is really but a statement of an opinion as to the general effect upon the promotion of trade or industry of a scheme of laws. These are the only findings which Congress has made essential in order to put into operation a legislative code having the aims described in the Declaration of Policy.

Nor is the breadth of the President's discretion left to the necessary implications of this limited requirement as to his findings. As already noted, the President in approving a code may impose his own conditions, adding to or taking from what is proposed, as "in his discretion" he thinks necessary "to effectuate the policy" declared by the act. Of course, he has no less liberty when he prescribes a code on his own motion or on complaint, and he is free to prescribe one if a code has not been approved. The act provides for the creation by the President of administrative agencies to assist him, but the action or reports of such agencies, or of his other assistants—their recommendations and findings in relation to the making of codes—have no sanction beyond the will of the President, who may accept, modify, or reject them as he pleases. Such recommendations or findings in no way limit the authority which section 3 undertakes to vest in the President with no other conditions than those there specified. And this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country.

Such a sweeping delegation of legislative power finds no support in the decisions upon which the Government especially relies. By the Interstate Commerce Act, Congress has itself provided a code of laws regulating the activities of the common carriers subject to the act, in order to assure the performance of their services upon just and reasonable terms, with adequate facilities and without unjust discrimination. Congress from time to time has elaborated its requirements, as needs have been disclosed. To facilitate the application of the standards prescribed by the act, Congress has provided an expert body. That administrative agency, in dealing with particular cases, is required to act upon notice and hearing, and its orders must be supported by findings of fact which in turn are sustained by evidence (*Interstate Commerce Commission* v. *Louisville & Nashville Railroad Co.*, 227 U. S. 88; *Florida* v. *United States*, 282 U. S. 194; *United States* v. *Baltimore & Ohio Railroad Co.*, 293 U. S. 454). When the Commission is authorized to issue, for the construction, extension or abandonment of lines, a certificate of "public convenience and necessity", or to permit the acquisition by one carrier of the control of another, if that is found to be "in the public interest", we have pointed out that these provisions are not left without standards to guide determination. The authority conferred has direct relation to the standards prescribed for the service of common carriers and can be exercised only upon findings, based upon evidence, with respect to particular conditions of transportation (*New York Central Securities Co.* v. *United States*, 287 U. S. 12, 24, 25; *Texas & Pacific Railway Co.* v. *Gulf, Colorado & Santa Fe Railway Co.*, 270 U. S. 266, 273; *Chesapeake & Ohio Railway Co.* v. *United States*, 283 U. S. 35, 42).

Similarly, we have held that the Radio Act of 1927[16] established standards to govern radio communications and, in view of the limited number of available broadcasting frequencies, Congress authorized allocation and licenses. The Federal Radio Commission was created as the licensing authority, in order to secure a reasonable equality of opportunity in radio transmission and reception. The authority of the Commission to grant licenses "as public convenience, interest, or necessity requires" was limited by the nature of radio communications, and by the scope, character, and quality of the services to be rendered and the relative advantages to be derived through distribution of facilities. These standards established by Congress were to be enforced upon hearing, and evidence, by an administrative body acting under statutory restrictions adapted to the particular activity (*Radio Commission* v. *Nelson Brothers Co.* (289 U. S. 266)).

In *Hampton & Co.* v. *United States* (276 U. S. 394) the question related to the "flexible tariff provision" of the Tariff Act of 1922.[17] We held that Congress had described its plan "to secure by law the imposition of customs duties on articles of imported merchandise which should equal the difference between the cost of producing in a foreign country the articles in question and laying them down for sale in the United States, and the cost of producing and selling like or similar articles in the United States." As the differences in cost might vary from time to time, provision was made for the investigation and determination of these differences by the executive branch so as to make "the adjustments necessary to conform the duties to the standard underlying that policy and plan (id., pp. 404, 405). The Court found the same principle to be applicable in fixing customs duties as that which permitted Congress to exercise its rate-making power in interstate commerce "by declaring the rule which shall prevail in the legislative fixing of rates" and then remitting "the fixing of such rates" in accordance with its provisions "to a rate-making body" (id., p. 409). The Court fully recognized the limitations upon the delegation of legislative power (id., pp. 408–411).

To summarize and conclude upon this point: Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section one. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.

Second. The question of the application of the provisions of the live-poultry code to intrastate transactions. Although the validity of the codes (apart from the question of delegation) rests upon the commerce clause of the Constitution, section 3 (a) is not in terms limited to interstate and foreign commerce. From the generality of its terms, and from the argument of the Government at the bar, it would appear that section 3 (a) was designed to authorize codes without that limitation. But under section 3 (f) penalties are confined to violations of a code provision "in any transaction in or affecting interstate or foreign commerce." This aspect of the case presents the question whether the particular provisions of the live-poultry code, which the defendants were convicted for violating and for having conspired to violate, were within the regulating power of Congress.

These provisions relate to the hours and wages of those employed by defendants in their slaughterhouses in Brooklyn and to the sales there made to retail dealers and butchers.

(1) Were these transactions "in" interstate commerce? Much is made of the fact that almost all the poultry coming to New York is sent there from other States. But the code provisions, as here applied, do not concern the transportation of the poultry from other States to New York, or the transactions of the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the city, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce (*Brown* v. *Houston* (114 U. S. 622, 632, 633); *Public Utilities Commission* v. *Landon* (249 U. S. 236, 246); *Industrial Association* v. *United States* (268 U. S. 64, 78, 79); *Atlantic Coast Line* v. *Standard Oil Co.* (275 U. S. 257, 267)).

The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a "current" or "flow" of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest

[16] Act of Feb. 23, 1927, c. 169, 44 Stat. 1162, as amended by the act of March 28, 1928, c. 263, 45 Stat. 373.

[17] Act of Sept. 21, 1922, c. 356, title III, sec. 315, 42 Stat. 858, 941.

within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here. See *Swift & Co.* v. *United States* (196 U. S. 375, 387, 388); *Lemke* v. *Farmers Grain Co.* (258 U. S. 50, 55); *Stafford* v. *Wallace* (258 U. S. 495, 519); *Chicago Board of Trade* v. *Olsen* (262 U. S. 1, 35); *Tagg Bros. & Moorhead* v. *United States* (280 U. S. 420, 439).

(2) Did the defendants' transactions directly "affect" interstate commerce so as to be subject to Federal regulation? The power of Congress extends not only to the regulation of transactions which are part of interstate commerce but to the protection of that commerce from injury. It matters not that the injury may be due to the conduct of those engaged in intrastate operations. Thus, Congress may protect the safety of those employed in interstate transportation "no matter what may be the source of the dangers which threaten it" (*Southern Railway Co.* v. *United States*, 222 U. S. 20, 27). We said in *Second Employers' Liability cases* (223 U. S. 1, 51), that it is the "effect upon interstate commerce", not "the source of the injury" which is "the criterion of congressional power." We have held that, in dealing with common carriers engaged in both interstate and intrastate commerce, the dominant authority of Congress necessarily embraces the right to control their intrastate operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to secure the freedom of that traffic from interference or unjust discrimination and to promote the efficiency of the interstate service (*the Shreveport case*, 234 U. S. 342, 351, 352; *Wisconsin Railroad Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 588). And combinations and conspiracies to restrain interstate commerce, or to monopolize any part of it, are none the less within the reach of the Antitrust Act because the conspirators seek to attain their end by means of intrastate activities (*Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310; *Bedford Co.* v. *Stonecutters Association*, 274 U. S. 37, 46).

We recently had occasion, in *Local 167* v. *United States* (291 U. S. 293), to apply this principle in connection with the live-poultry industry. That was a suit to enjoin a conspiracy to restrain and monopolize interstate commerce in violation of the Antitrust Act. It was shown that market men, teamsters, and slaughterers (shochtim) had conspired to burden the free movement of live poultry into the metropolitan area in and about New York City. Market men had organized an association, had allocated retailers among themselves, and had agreed to increase prices. To accomplish their objects, large amounts of money were raised by levies upon poultry sold, men were hired to obstruct the business of dealers who resisted, wholesalers and retailers were spied upon and by violence and other forms of intimidation were prevented from freely purchasing live poultry. Teamsters refused to handle poultry for recalcitrant market men and members of the shochtim union refused to slaughter. In view of the proof of that conspiracy, we said that it was unnecessary to decide when interstate commerce ended and when intrastate commerce began. We found that the proved interference by the conspirators "with the unloading, the transportation, the sales by market men to retailers, the prices charged and the amount of profits exacted" operated "substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry" while unquestionably it was in interstate commerce. The intrastate acts of the conspirators were included in the injunction because that was found to be necessary for the protection of interstate commerce against the attempted and illegal restraint (id., pp. 297, 299, 300).

The instant case is not of that sort. This is not a prosecution for a conspiracy to restrain or monopolize interstate commerce in violation of the Antitrust Act. Defendants have been convicted, not upon direct charges of injury to interstate commerce or of interference with persons engaged in that commerce, but of violations of certain provisions of the live-poultry code and of conspiracy to commit these violations. Interstate commerce is brought in only upon the charge that violations of these provisions—as to hours and wages of employees and local sales—"affected" interstate commerce.

In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. Direct effects are illustrated by the railroad cases we have cited, as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control. As we said in the *Minnesota Rate cases* (230 U. S. 352, 410): "In the intimacy of commercial relations, much that is done in the superintendence of local matters may have an indirect bearing upon interstate commerce. The development of local resources and the extension of local facilities may have a very important effect upon communities less favored and to an appreciable degree alter the course of trade. The freedom of local trade may stimulate interstate commerce, while restrictive measures within the police power of the State enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volume of articles transported into or out of the State." See also *Kidd* v. *Pearson* (128 U. S. 1, 21); *Heisler* v. *Thomas Colliery Co.* (260 U. S. 245, 259, 260).

The distinction between direct and indirect effects has been clearly recognized in the application of the Anti-Trust Act. Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear (*Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310). But where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes (*United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410, 411; *United Leather Workers* v. *Herkert*, 265 U. S. 457, 464–467; *Industrial Association* v. *United States*, 268 U. S. 64, 82; *Levering & Garrigues Co.* v. *Morrin*, 289 U. S. 103, 107, 108). In the case last cited we quoted with approval the rule that had been stated and applied in *Industrial Association* v. *United States*, supra, after review of the decisions, as follows: "The alleged conspiracy and the acts here complained of spent their intended and direct force upon a local situation, for building is as essentially local as mining, manufacturing, or growing crops, and if, by resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."

While these decisions related to the application of the Federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government. We must consider the provisions here in question in the light of this distinction.

The question of chief importance relates to the provisions of the code as to the hours and wages of those employed in defendants' slaughterhouse markets. It is plain that these requirements are imposed in order to govern the details of defendants' management of their local business. The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce. The question of how many hours these employees should work and what they should be paid differs in no essential respect from similar questions in other local businesses which handle commodities brought into a State and there dealt in as a part of its internal commerce. This appears from an examination of the considerations urged by the Government with respect to conditions in the poultry trade. Thus the Government argues that hours and wages affect prices; that slaughterhouse men sell at a small margin above operating costs; that labor represents 50 to 60 percent of these costs; that a slaughterhouse operator paying lower wages or reducing his cost by exacting long hours of work translates his saving into lower prices; that this results in demands for a cheaper grade of goods; and that the cutting of prices brings about a demoralization of the price structure. Similar conditions may be adduced in relation to other businesses. The argument of the Government proves too much. If the Federal Government may determine the wages and hours of employees in the internal commerce of a State because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc. All the processes of production and distribution that enter into cost could likewise be controlled. If the cost of doing an intrastate business is in itself the permitted object of Federal control, the extent of the regulation of cost would be a question of discretion and not of power.

The Government also makes the point that efforts to enact State legislation establishing high labor standards have been impeded by the belief that unless similar action is taken generally commerce will be diverted from the States adopting such standards, and that this fear of diversion has led to demands for Federal legislation on the subject of wages and hours. The apparent implication is that the Federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.

It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it. Our growth and development have called for wide use of the com-

merce power of the Federal Government in its control over the expanded activities of interstate commerce and in protecting that commerce from burdens, interferences, and conspiracies to restrain and monopolize it. But the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. The same answer must be made to the contention that is based upon the serious economic situation which led to the passage of the Recovery Act—the fall in prices, the decline in wages and employment, and the curtailment of the market for commodities. Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting "the cumulative forces making for expanding commercial activity." Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.

We are of the opinion that the attempt through the provisions of the code to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of Federal power.

The other violations for which defendants were convicted related to the making of local sales. Ten counts, for violation of the provision as to "straight killing", were for permitting customers to make "selections of individual chickens taken from particular coops and half coops." Whether or not this practice is good or bad for the local trade, its effect, if any, upon interstate commerce was only indirect. The same may be said of violations of the code by intrastate transactions consisting of the sale "of an unfit chicken" and of sales which were not in accord with the ordinances of the city of New York. The requirement of reports as to prices and volumes of defendants' sales was incident to the effort to contral their intrastate business.

In view of these conclusions, we find it unnecessary to discuss other questions which have been raised as to the validity of certain provisions of the code under the due-process clause of the fifth amendment.

On both the grounds we have discussed, the attempted delegation of legislative power, and the attempted regulation of intrastate transactions which affect interstate commerce only indirectly, we hold the code provisions here in question to be invalid and that the judgment of conviction must be reversed.

No. 854—reversed.

No. 864—affirmed.

[Supreme Court of the United States. Nos. 854 and 864. October Term, 1934. 854. *A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, petitioners,* v. *The United States of America.* 864. *The United States of America, petitioner,* v. *A. L. A. Schechter Poultry Corporation, Martin Schechter, Alex Schechter, and Aaron Schechter.* On writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit. (May 27, 1935)]

Mr. Justice Cardozo concurring.

The delegated power of legislation which has found expression in this code is not canalized within banks that keep it from overflowing. It is unconfined and vagrant, if I may borrow my own words in an earlier opinion (*Panama Refining Co.* v. *Ryan,* 293 U. S. 388, 440).

This court has held that delegation may be unlawful though the act to be performed is definite and single, if the necessity, time, and occasion of performance have been left in the end to the discretion of the delegate (*Panama Refining Co.* v. *Ryan,* supra). I thought that ruling went too far. I pointed out in an opinion that there had been "no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases" (293 U. S. at p. 435). Choice, though within limits, had been given him "as to the occasion, but none whatever as to the means" (ibid). Here, in the case before us, is an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here in effect is a roving commission to inquire into evils and upon discovery correct them.

I have said that there is no standard, definite or even approximate, to which legislation must conform. Let me make my meaning more precise. If codes of fair competition are codes eliminating "unfair" methods of competition ascertained upon inquiry to prevail in one industry or another, there is no lawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered. For many years a like power has been committed to the Federal Trade Commission with the approval of this Court in a long series of decisions. (Cf. *Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304, 312; *Federal Trade Commission* v. *Raladam Co.,* 283 U. S. 643, 648; *Federal Trade Commission* v. *Gratz,* 253 U. S. 421). Delegation in such circumstances is born of the necessities of the occasion. The industries of the country are too many and diverse to make it possible for Congress, in respect of matters such as these, to legislate directly with adequate appreciation of varying conditions. Nor is the substance of the power changed because the President may act at the instance of trade or industrial associations having special knowledge of the facts. Their function is strictly advisory; it is the imprimatur of the President that begets the quality of law (*Doty* v. *Love,* 294 U. S. —). When the task that is set before one is that of cleaning house, it is prudent as well as usual to take counsel of the dwellers.

But there is another conception of codes of fair competition, their significance and functions, which leads to very different consequences, though it is one that is struggling now for recognition and acceptance. By this other conception a code is not to be restricted to the elimination of business practices that would be characterized by general acceptation as oppressive or unfair. It is to include whatever ordinances may be desirable or helpful for the well-being or prosperity of the industry affected. In that view, the function of its adoption is not merely negative, but positive; the planning of improvements as well as the extirpation of abuses. What is fair, as thus conceived, is not something to be contrasted with what is unfair or fraudulent or tricky. The extension becomes as wide as the field of industrial regulation. If that conception shall prevail, anything that Congress may do within the limits of the commerce clause for the betterment of business may be done by the President upon the recommendation of a trade association by calling it a code. This is delegation running riot. No such plenitude of power is susceptible of transfer. The statute, however, aims at nothing less, as one can learn both from its terms and from the administrative practice under it. Nothing less is aimed at by the code now submitted to our scrutiny.

The code does not confine itself to the suppression of methods of competition that would be classified as unfair according to accepted business standards or accepted norms of ethics. It sets up a comprehensive body of rules to promote the welfare of the industry, if not the welfare of the Nation, without reference to standards, ethical or commercial, that could be known or predicted in advance of its adoption. One of the new rules, the source of 10 counts in the indictment, is aimed at an established practice, not unethical or oppressive, the practice of selective buying. Many others could be instanced as open to the same objection if the sections of the code were to be examined one by one. The process of dissection will not be traced in all its details. Enough at this time to state what it reveals. Even if the statute itself had fixed the meaning of fair competition by way of contrast with practices that are oppressive or unfair, the code outruns the bounds of the authority conferred. What is excessive is not sporadic or superficial. It is deep-seated and pervasive. The licit and illicit sections are so combined and welded as to be incapable of severance without destructive mutilation.

But there is another objection, far-reaching and incurable, aside from any defect of unlawful delegation.

If this code had been adopted by Congress itself, and not by the President on the advice of an industrial association, it would even then be void unless authority to adopt it is included in the grant of power "to regulate commerce with foreign nations and among the several States" (United States Constitution, art. I, sec. 8, clause 3).

I find no authority in that grant for the regulation of wages and hours of labor in the intrastate transactions that make up the defendants' business. As to this feature of the case little can be added to the opinion of the Court. There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours "is an elastic medium which transmits all tremors through its territory; the only question is of their size." Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. (Cf. *Board of Trade* v. *Olsen* (262 U. S. 1).) There is no penumbra of uncertaintly obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our Federal system.

To take from this code the provisions as to wages and the hours of labor is to destroy it altogether. If a trade or an industry is so predominantly local as to be exempt from regulation by the Congress in respect of matters such as these, there can be no "code" for it at all. This is clear from the provisions of section 7 (a) of the act with its explicit disclosure of the statutory scheme. Wages and the hours of labor are essential features of the plan, its very bone and sinew. There is no opportunity in such circumstances for the severance of the infected parts in the hope of saving the remainder. A code collapses utterly with bone and sinew gone.

I am authorized to state that Mr. Justice Stone joins in this opinion.

[Supreme Court of the United States. No. 717.—October term, 1934. *Louisville Joint Stock Land Bank, petitioner,* v. *William W. Radford, Sr.* On certiorari to the United States Circuit Court of Appeals for the sixth circuit. (May 27, 1935)]

Mr. Justice Brandeis delivered the opinion of the Court.

This case presents for decision the question whether subsection (s) added to section 75 of the Bankruptcy Act[18] by the Frazier-Lemke Act, June 28, 1934, chapter 869, 48 Statute 1289, is consistent with the Federal Constitution. The Federal court for western Kentucky (8 F. Supp. 489) and the Circuit Court of

[18] Section 75 had been added to the Bankruptcy Act on Mar. 3, 1933, by c. 204, 47 Stat. 1470.

Appeals for the sixth circuit (74 F. (2d) 576) held it valid in this case; and it has been sustained elsewhere.[19] In view of the novelty and importance of the question, we granted certiorari (294 U. S. —).

In 1922 (and in 1924) Radford mortgaged to the Louisville Joint Stock Land Bank a farm in Christian County, Ky., comprising 170 acres, then presumably of the appraised value of at least $18,000.[20] The mortgages were given to secure loans aggregating $9,000, to be repaid in installments over the period of 34 years with interest at the rate of 6 percent. Radford's wife joined in the mortgages and the notes. In 1931 and subsequent years, the Radfords made default in their covenant to pay the taxes. In 1932 and 1933, they made default in their promise to pay the installments of interest and principal. In 1933, they made default, also, in their covenant to keep the buildings insured. The bank urged the Radfords to endeavor to refinance the indebtedness pursuant to the provisions of the Emergency Farm Mortgage Act, May 12, 1933, chapter 25, 48 Statute 41.[21] After they declined to do so, the bank having declared the entire indebtedness immediately payable, commenced, in June 1933, a suit in the Circuit Court for Christian County against the Radfords and their tenant to foreclose the mortgages; and, invoking a covenant in the mortgage expressly providing therefor, sought the appointment of a receiver to take possession and control of the premises and to collect the rents and profits.

The application for the appointment of a receiver was denied, and all proceedings in the suit were stayed, upon request of the conciliation commissioner for Christian County appointed under section 75 of the Bankruptcy Act, as he stated that Radford desired to avail himself of the provisions of that section. Proceeding under it, Radford filed in the Federal court for western Kentucky a petition praying that he be afforded an opportunity to effect a composition of his debts. The petition was promptly approved, and a meeting of the creditors was held. But Radford failed to obtain the acceptance of the requisite majority in number and amount to the composition proposed. Then the bank offered to accept a deed of the mortgaged property in full satisfaction of the indebtedness to it and to assume the unpaid taxes. Radford refused to execute the deed, and on June 30, 1934, the State court entered judgment ordering a foreclosure sale.

Meanwhile the Frazier-Lemke Act had been passed on June 28, 1934; and on August 6, 1934, and again on November 10, 1934, Radford filed amended petitions for relief thereunder. The second amended petition prayed that Radford be adjudged a bankrupt; that his property, whether free or encumbered, be appraised; and that he have the relief provided for in paragraphs 3 and 7 of subsection (s) of the Frazier-Lemke amendment. That act provides, among other things, that a farmer who has failed to obtain the consents requisite to a composition under section 75 of the Bankruptcy Act may, upon being adjudged a bankrupt, acquire alternative options in respect to mortgaged property:

1. By paragraph 3, the bankrupt may, if the mortgagee assents, purchase the property at its then appraised value, acquiring title thereto as well as immediate possession, by agreeing to make deferred payments as follows: 2½ percent within 2 years, 2½ percent within 3 years, 5 percent within 4 years, 5 percent within 5 years, the balance within 6 years. All deferred payments to bear interest at the rate of 1 percent per annum.

2. By paragraph 7, the bankrupt may, if the mortgagee refuses his assent to the immediate purchase on the above basis, require the bankruptcy court to—

"Stay all proceedings for a period of 5 years, during which 5 years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within 6 months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this act. At the end of 5 years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided*, That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this act: *Provided, however*, That the provisions of this act shall apply only to debts existing at the time this act becomes effective."

Answering the amended petition, the bank duly claimed that the Frazier-Lemke Act is, and the relief sought would be, unconstitutional. It prayed that Radford's amended petition be dismissed, that the bank be permitted to pursue its remedies in the State court, and that it be allowed to proceed with the foreclosure sale in accordance with the judgment of that court. It refused to accept the composition and extension proposal offered by Radford, declined to consent to the proposed sale of that property to Radford at the appraised value or any value on the terms set forth in paragraph 3, and also objected to his retaining possession thereof with the privilege of purchasing the same provided by paragraph 7. The Federal court overruled the bank's objections, denied its prayers, adjudged Radford a bankrupt within the meaning of the Frazier-Lemke Act, and appointed a referee to take proceedings thereunder. There was no claim that the farm was exempt as a homestead or otherwise.

The referee ordered an appraisal of all of Radford's property, encumbered and unencumbered. The appraisers found that "the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Bank has a mortgage" and also the "market value of said land" was then $4,445.[22] The referee approved the appraisal, although the bank offered in open court to pay $9,205.09 in cash for the mortgaged property; and counsel for the bankrupt admitted that the bank had a valid lien upon it for the amount so offered to be paid, and that, under the law, if the bank's offer to purchase the property were accepted all the money paid in in cash would be immediately returned to it in satisfaction of the mortgage indebtedness.

The bank refused to consent to a sale of the mortgaged property to Radford at the appraised value and filed written objections to such sale and to the manner of payments prescribed by paragraph 3 of subsection (s). Thereupon the referee ordered that for the period of 5 years all proceedings for the enforcement of the mortgages be stayed; and that the possession of the mortgaged property, subject to liens, remain in Radford, under the control of the court, as provided in paragraph 7 of subsection (s). The referee fixed the rental for the first year at $325, and ordered that for each subsequent year the rental be fixed by the court. It was stipulated that the annual taxes and insurance premium amount to $105, and admitted that administration charges said to amount to $22.75 must be paid from the rental. All the orders of the referee were, upon a petition for a review, duly approved by the district court, and its decree was affirmed by the Circuit Court of Appeals on February 11, 1935.

Since entry of the judgment of the court of appeals, this Court has held unconstitutional provisions of State legislation in some respects comparable to the Frazier-Lemke Act (*W. B. Worthen Co.* v. *Kavanaugh* (294 U. S. —)). There we said: "With studied indifference to the interests of the mortgagee or to his appropriate protection they have taken from the mortgage the quality of an acceptable investment for a rational investor"; and, "So viewed they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security." The bank insists, among other things, that the Frazier-Lemke Act has been here applied with like result; that the provisions of the act, even if applied solely to mortgages thereafter executed, would transcend the bankruptcy power; and that, in any event, to apply them to preexisting mortgages violates the fifth amendment of the Federal Constitution. Radford contends that the Frazier-Lemke Act is valid because it is a proper exercise of the power conferred by article I, section 8, of the Constitution, which declares: "Congress shall have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States." Before discussing these conten-

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[19] *Bradford, Jr.*, v. *Fahey* (— F. (2d) —, 4 C. C. A.); *In re Cope* (D. C. Colo., 8 F. Supp. 778); *Galloway* v. *Union Trust Co.* (D. C. E. D. Ark., 9 F. Supp. 575); *In re Plumer* (D. C. S. D. Cal., 9 F. Supp. 923); *In re Cyr* (D. C. N. D. Ind., 9 F. Supp. 697); *In re Jones* (D. C. W. Mo., 10 F. Supp. 165). Compare *In re Bradford* (7 F. Supp. 665, rev. in *Bradford Jr.*, v. *Fahey*); *In re Moore* (8 F. Supp. 393); *Paine* v. *Capital Freehold Land & Trust Co.* (8 F. Supp. 500); *In re Miner* (9 F. Supp. 1); *In re Duffy* (9 F. Supp. 166); *In re Doty* (10 F. Supp. 195); *In re Payne* (D. C. Tex., May 9, 1935) (holding the act unconstitutional).

[20] The bank was organized under the Federal Farm Loan Act of July 17, 1916, c. 245, 39 Stat. 360. Section 12 of the act provided that loans should not exceed 50 percent of the value of the land mortgaged and 20 percent of the value of permanent insured improvements thereon. The bank loaned the Radfords $8,000 in 1922 and an additional $1,000 in 1924. The stocks and bonds of the bank are privately owned. The bonds "being instrumentalities of the Government of the United States" are tax exempt. Compare *Smith* v. *Kansas City Title Co.* (255 U. S. 180); *Federal Land Bank of New Orleans* v. *Crosland* (261 U. S. 374); Act of May 12, 1933, c. 25, sec. 29, 48 Stat. 46.

[21] That act empowered the Federal land banks and the land bank Commissioner to lend farmers 75 percent of the normal value of their land at 4½-percent interest for the first 5 years and 5 percent thereafter; no repayment of principal to be required for 5 years (act of May 12, 1933, c. 25, secs. 24, 32, 48 Stat. 43, 48); (act of June 16, 1933, c. 98, sec. 80, 48 Stat. 273); (act of Jan. 31, 1934, c. 7, sec. 10, 48 Stat. 347). Mortgage loans made to farmers by the institutions subject to the Farm Credit Administration outstanding June 30, 1934, aggregated $2,029,305,081. As of Mar. 31, 1935, the loans had been increased to $2,661,558,017. Farm Credit Administration, monthly reports on loans and discounts, March 1935. "The proceeds of the loans closed [in 1933–34] both by the land banks and by the land bank commissioner were used principally to refinance existing indebtedness. Of the loans closed by the land banks, approximately 86.8 percent were used for this purpose, and of those closed by the Commissioner, 92 percent were so used." The Farm Real Estate Situation, 1933–34 (Circular No. 354 of U. S. Department of Agriculture, April 1935, p. 5).

[22] The appraisal dated Dec. 1, 1934, recited originally that $4,445 was the "fair and reasonable value", without mentioning the market value. It was, by leave of court, amended on Dec. 4, 1934, to read as stated in the text. Besides the mortgaged property, Radford had a one-half interest in a half-acre lot and house thereon appraised at $150, exempt personal property appraised at $568, and nonexempt personal property at $831.50. The amount of the indebtedness other than to the bank and the terms of the composition offered do not appear.

tions it will be helpful to consider the position occupied generally by mortgagees prior to the enactment here challenged.

First. For centuries efforts to protect necessitous mortgagors have been persistent. Gradually the mortgage of real estate was transformed from a conveyance upon condition into a lien; and failure of the mortgagor to pay on the day fixed ceased to effect an automatic foreclosure. Courts of equity, applying their established jurisdiction to relieve against penalties and forfeitures, created the equity of redemption. Thus the mortgagor was given a reasonable time to cure the default and to require a reconveyance of the property. Legislation in many States carried this development further, and preserved the mortgagor's right to possession, even after default, until the conclusion of foreclosure proceedings.[21] But the statutory command that the mortgagor should not lose his property on default had always rested on the assumption that the mortgagee would be compensated for the default by a later payment, with interest, of the debt for which the security was given; and the protection afforded the mortgagor was, in effect, the granting of a stay. No instance has been found, except under the Frazier-Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full.[24]

This right of the mortgagee to insist upon full payment before giving up his security has been deemed of the essence of a mortgage. His position in this respect was not changed when foreclosure by public sale superseded strict foreclosure or when the legislatures of many States created a right of redemption at the sale price. To protect his right to full payment or the mortgaged property, the mortgagee was allowed to bid at the judicial sale on foreclosure.[25] In many States other statutory changes were made in the form and detail of foreclosure and redemption.[26] But practically always the measures adopted for the mortgagor's relief, including moratorium legislation enacted by the several States during the present depression,[27] resulted primarily in a stay; and the relief afforded rested, as theretofore, upon the assumption that no substantive right of the mortgagee was being impaired, since payment in full of the debt, with interest, would fully compensate him.

Statutes for the relief of mortgagors, when applied to preexisting mortgages, have given rise from time to time to serious constitutional questions. The statutes were sustained by this Court when, as in *Home Building and Loan Association* v. *Blaisdell* (290 U. S. 398), they were found to preserve substantially the right of the mortgagee to obtain, through application of the security, payment of the indebtedness. They were stricken down, as in *W. B. Worthen Co.* v. *Kavanaugh* (294 U. S. —) when it appeared that this substantive right was substantially abridged. Compare *W. B. Worthen Co.* v. *Thomas* (292 U. S. 426).

Second. Although each of our National Bankruptcy Acts followed a major or minor depression[28], none had, prior to the Frazier-Lemke amendment, sought to compel the holder of a mortgage to surrender to the bankrupt either the possession of the mortgaged property or the title so long as any part of the debt thereby secured remained unpaid. The earlier bankruptcy acts created some exemptions of unencumbered property[29], but none had attempted to enlarge the rights or privileges of the mortgagor as against the mortgagee. The provisions of the acts, so far as concerned the debtor, were aimed to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes", and to give him "a new opportunity in life and a clear field for future effort, unhampered by the pressure of discouragement and preexisting debt" (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244). No bankruptcy act had undertaken to supply him capital with which to engage in business in the future. Some States had granted to debtors extensive exemptions of unencumbered property from liability to seizure in satisfaction of debts; and these exemptions were recognized in the Bankruptcy Act of 1867 as well as that of 1898. But unless the mortgagee released his security, in order to prove in bankruptcy for the full amount of the debt, a mortgage even of exempt property was not disturbed by bankruptcy proceedings (*Long* v. *Bullard*, 117 U. S. 617).[30]

No bankruptcy act had undertaken to modify in the interest of either the debtor or other creditors any substantive right of the holder of a mortgage valid under Federal law. Supervening bankruptcy had, in the interest of other creditors, affected in some respects the remedies available to lien holders. In *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Ry.* (294 U. S. —), where, in a proceeding for reorganization of a railroad under section 77 of the Bankruptcy Act, the district court was held to have the power to enjoin temporarily the sale of pledged securities, this Court said: "The injunction here in no way impairs the lien, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action. It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy (*Stratton* v. *New*, 283 U. S. 318, 321, and cases cited" (p. —)). "The injunction here goes no further than to delay the enforcement of the contract. It affects only the remedy" (p. —).

Bankruptcy acts had, either expressly, or by implication, as was held in *Van Huffel* v. *Harkelrode* (284 U. S. 225, 227), authorized the court to direct, in the interest of other creditors, that all liens upon property forming a part of the bankrupt's estate be marshalled; that the property be sold free of encumbrances; and that the rights of all lien holders be transferred to the proceeds of the sale—a power which "had long been exercised by Federal courts sitting in equity when ordering sales by receivers or on foreclosure" (*First National Bank* v. *Shedd* (121 U. S. 74, 87); *Mellen* v. *Moline Malleable Iron Works* (131 U. S. 352, 367)). Compare *Ray* v. *Norseworthy* (23 Wall. 128, 135). But there had been no suggestion that such a sale could be made to the prejudice of the lienor, in the interest of either the debtor or of other creditors. By the settled practice, a sale free of liens will not be ordered by the bankruptcy court if it appears that the amount of the encumbrance exceeds the value of the property.[31] And the sale is

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[21] See Pomeroy's Equity Jurisprudence, secs. 162–163, 376, 381–382, 1180, 1186–1190, 1219; H. W. Chaplin, The Story of Mortgage Laws, 4 Harv. Law Rev. 4; William F. Walsh, Development of the Title and Lien Theories of Mortgages, 9 New York University Law Quarterly Rev. 280.

[24] It is the general rule that a holder of the equity of redemption can redeem from the mortgagee only on paying the entire mortgage debt (*Collins* v. *Riggs*, 14 Wall. 491; *Jones* v. *Van Doren*, 130 U. S. 684, 692; *American Loan & Trust Co.* v. *Atlanta Electric Ry. Co.*, 99 Fed. 313, 315, 316; *Lomas & Nettleton Co.* v. *Di Francesco*, 116 Conn. 253, 258; *Polk* v. *Lord Clinton*, 12 Ves. Jr. 48, 58). The rule is for the protection of the mortgagee, and unless waived by him, applies even when the redeemer has an interest in only part of the mortgaged property (*Bank of Luverne* v. *Turk*, 133 So. 52 (Ala. 1931); *Quinn Plumbing Co.* v. *New Miami Shores Corp.*, 100 Fla. 413; *Shinn* v. *Barrie*, 182 Ark. 366). Recognized exceptions to the rule are based on the action of the mortgagee in himself causing the lien on a part of the mortgaged property to be extinguished (*Dexter* v. *Arnold*, 1 Sumner, 109, 118; *Welch* v. *Beers*, 8 Allen, 151; *George* v. *Wood*, 11 Allen, 41; *Meachem* v. *Steele*, 93 Ill. 135; *Coffin* v. *Parker*, 127 N. Y. 117); or on the right of eminent domain (*Dows* v. *Cogden*, 16 How. Pr. 571; *Mutual Insurance Co.* v. *Eastern & Amboy R. R.*, 38 N. J. Eq. 132). Where the right of redemption after foreclosure sale is based entirely on statute, a different rule may be prescribed. Compare *Northwestern Mutual Life Ins. Co.* v. *Hansen*, 205 Iowa 789; *Tuttle* v. *Dewey*, 44 Iowa, 306; *State* v. *Carpenter*, 19 Wash. 378; see *Dougherty* v. *Kubat*, 67 Nebr. 269, 273. For collections of cases, see 2 Jones, Mortgages (8th ed. 1928) secs. 1370–1377; 2 Wiltsie, Mortgage Foreclosure (4th ed. 1927) secs. 1196–1213, 1071.

[25] Compare *Pewabic Mining Co.* v. *Mason* (145 U. S. 349, 361, 362); *Easton* v. *German-American Bank* (127 U. S. 532); *Twin Lick Oil Co.* v. *Marbury* (91 U. S. 587, 590); *Buchler* v. *Black* (226 Fed. 703); *Caldwell* v. *Caldwell* (173 Ala. 216); *Felton* v. *Le Breton* (92 Calif. 457); *Chillicothe Paper Co.* v. *Wheeler* (68 Ill. App. 343); *Kock* v. *Burgess* (176 Iowa, 493); *McNair* v. *Biddle* (8 Mo. 257); *Stover* v. *Stark* (61 Nebr. 374); *Paulson* v. *Oregon Surety Co.* (70 Oreg. 175); *Blythe* v. *Richards* (10 Serg. & R. 261); *Archambault* v. *Pierce* (46 R. I. 295). Some States have abolished by statute the general rule that a mortgagee, exercising a power of sale conferred in the mortgage, may not purchase at his own sale. See *Heighe* v. *Sale of Real Estate* (164 Atl. 671, 676 (Md. 1933)); *Ten Eyck* v. *Craig* (62 N. Y. 406, 421); *Galvin* v. *Newton* (19 R. I. 176, 178); 2 Wiltsie, Mortgage Foreclosure (4th ed. 1927), sec. 869.

In England the power conferred upon the court in foreclosure proceedings to order a sale, instead of strict foreclosure (15 & 16 Vict., c. 86, sec. 48; 44 & 45 Vict., c. 41, sec. 25), will not be exercised over the mortgagee's objection when the property is not likely to bring the full amount of the mortgage debt (*Merchant Banking Co.* v. *London & Hanseatic Bank* (55 L. J. ch. 479); *Provident Clerks' Mutual Ass'n* v. *Lewis* (62 L. J. ch. 89); at least, not unless security is put up to protect the objecting mortgagee (*Cripps* v. *Wood* (51 L. J. ch. 584)); or a bidding reserved sufficient to cover the amount due the mortgagee (*Whitfield* v. *Roberts* (5 Jur. N. S. 113)). Compare *Corsellis* v. *Patman* (L. R. 4 Eq. 156); *Wooley* v. *Colman* (L. R. 21 ch. div. 169); *Hurst* v. *Hurst* (16 Beav. 372).

[26] See 3 Jones, Mortgages (8th ed. 1928), c. 30.

[27] See A. H. Feller, Moratory Legislation (1933) (46 Harv. Law Rev. 1061, 1081); Commerce Clearing House, Bank Law Federal Service—"L." Unit (128 C. C. H., pp. 7802–7809).

[28] See John Hanna, Agriculture and the Bankruptcy Act (1934) (19 Minn. Law Review 1). The first Bankruptcy Act, Apr. 4, 1800 (c. 19, 2 Stat. 19), followed the minor depression of 1798. The second Bankruptcy Act, Aug. 19, 1841 (c. 9, 5 Stat. 440), followed the severe depression of 1837. The third Bankruptcy Act, Mar. 3, 1867 (c. 176, 14 Stat. 517), followed the financial disturbances incident to the Civil War. The fourth Bankruptcy Act, July 1, 1898 (c. 541, 30 Stat. 544), followed the depression of 1893. Farmers were first brought within the scope of our bankruptcy laws by the act of 1841, which made voluntary bankruptcy available to all. In the act of 1867, farmers were not, as in the act of 1898, excluded from involuntary bankruptcy.

[29] Act of 1800 (c. 19, secs. 34, 35, 2 Stat. 19, 30, 31); act of 1841 (c. 9, sec. 3, 5 Stat. 440, 443); act of 1867 (c. 176, sec. 14, 14 Stat. 517, 522).

[30] Compare Hook, Does the Frazier-Lemke Amendment Grant Relief as to Debts Secured by Liens on Exempt Property? (1934) (11 American Bankruptcy Review 21).

[31] *Federal Land Bank of Baltimore* v. *Kurtz* (70 F. (2d) 46); *New Liberty Loan & Savings Ass'n* v. *Nusbaum* (70 F. (2d) 49); *In re American Magnestone Co.* (34 Fed. (2d) 681); *In re Fayetteville Wagon-Wood & Lumber Co.* (197 Fed. 180); *In re Foster* (181 Fed. 703; *In re Gibbs* (109 Fed. 627); *In re Cogley* (107 Fed. 73); *In re Shaeffer* (105 Fed. 352); *In re Styr* (98 Fed. 290); *In re Taliafero* (Fed. Case No. 13736 (Chief Justice Waite)); see *Kimmel* v. *Crocker*

always made so as to obtain for the property the highest possible price. No court appears ever to have authorized a sale at a price less than that which the lien creditor offered to pay for the property in cash.[32] Thus a sale free of liens in no way impairs any substantive right of the mortgagor, and such a sale is not analogous to the sale to the bankrupt provided for by paragraph 7 of the Frazier-Lemke Act.

Nor do the provisions of the bankruptcy acts concerning compositions afford any analogy to the provisions of paragraph 7. So far as concerns the debtor, the composition is an agreement with the creditors in lieu of a distribution of the property in bankruptcy—an agreement which "originates in a voluntary offer by the bankrupt, and results, in the main, from voluntary acceptance by his creditors" (*Nassau Smelting & Refining Works, Ltd.* v. *Brightwood Bronze Foundry Co.*, (265 U. S. 269, 271); *Myers* v. *International Trust Co.* (273 U. S. 380, 383)). So far as concerns dissenting creditors, the composition is a method of adjusting among creditors rights in property in which all are interested. In ordering the adjustment, the bankruptcy court exercises a power similar to that long exercised by courts of law (*Head* v. *Amoskeag Manufacturing Co.* (113 U. S. 9, 21)); and of admiralty (*The Steamboat Orleans* v. *Phoebus* (11 Pet. 175, 183)). It is the same power, which a court of equity exercises when it compels dissenting creditors, in effect, to submit to a plan of reorganization approved by it as beneficial and assented to by the requisite majority of the creditors (*Shaw* v. *Railroad Co.* (100 U. S. 605); *Kansas City Terminal Ry. Co.* v. *Central Union Trust Co.* (271 U. S. 445). Compare *National Surety Co.* v. *Coriell* (289 U. S. 426); *First National Bank of Cincinnati* v. *Flershem* (290 U. S. 504)). In no case of composition is a secured claim affected except when the holder is a member of a class; and then only when the composition is desired by the requisite majority and is approved by the court.[33] Never, so far as appears, has any composition affected a secured claim held by a single creditor. Compositions are comparable to the voluntary adjustment with the mortgagee provided for in paragraph 3 of the Frazier-Lemke amendment. They are not analogous to the so-called "adjustment" compelled by paragraph 7.

Third. The bank contends that the Frazier-Lemke Act is void, because it is not a law "on the subject of bankruptcies"; that it does not deal with that subject; and hence that it is in contravention of the tenth amendment, which declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." The argument is that the essential features of a bankruptcy law are these: The surrender by the debtor of his property for ratable distribution among his creditors, except so far as encumbered or exempt, and the discharge by his creditors of all claims against the debtor; that, on the other hand, the main purpose, and the effect, of the Frazier-Lemke Act is to prevent distribution of the farmer-mortgagor's property; to enable him to remain in possession despite persisting default; to scale down the mortgage debt; and to give the mortgagor the option to acquire the full title to the property upon paying the reduced amount. Thus, it is urged, the act effects a fundamental change in the relative rights of mortgagor and mortgagee of real property as determined by the law of the State in which the property is located. The bank argues that if the bankruptcy clause were construed to permit the making of such fundamental changes Congress could deal with every phase of the relations between an insolvent or nonpaying debtor and his creditors; that it might, among other things, divest State courts of jurisdiction over suits upon promissory notes between citizens of the same State; that commercial controversies arising from breach of contract might be brought under like control; that the obtaining of goods or credits by false pretenses, for example, could be made a crime against the United States despite the rule declared in *United States* v. *Fox* (95 U. S. 670); that the commercial and financial life of each State would be in large measure subject to Federal regulation; and that the lines between State and Federal Government could thus be redrawn by Congress.

It is true that the original purpose of our bankruptcy acts was the equal distribution of the debtor's property among his creditors; and that the aim of the legislation was to do this promptly.[34] But the scope of the bankruptcy power conferred upon Congress is not necessarily limited to that which has been exercised. The first act provided only for compulsory proceedings against traders, bankers, brokers, and underwriters. The operation of later ones has been gradually extended so as to include practically all insolvent debtors; to provide for voluntary petitions; and to permit compositions with creditors, even without an adjudication of bankruptcy. The discharge of the debtor has come to be an object of no less concern than the distribution of his property (*Hanover National Bank* v. *Moyses* (186 U. S. 181)). As was said in *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Ry. Co.* (294 U. S. —): "The fundamental and radically progressive nature of these extensions becomes apparent upon their mere statement; but all have been judicially approved or accepted as falling within the power conferred by the bankruptcy clause of the Constitution."[35]

It is true that the position of a secured creditor, who has rights in specific property, differs fundamentally from that of an unsecured creditor, who has none; and that the Frazier-Lemke Act is the first instance of an attempt, by a bankruptcy act, to abridge, solely in the interest of the mortgagor, a substantive right of the mortgagee in specific property held as security. But we have no occasion to decide in this case whether the bankruptcy clause confers upon Congress generally the power to abridge the mortgagee's rights in specific property. Paragraph 7 declares that "the provisions of this act shall apply only to debts existing at the time this act becomes effective." The power over property pledged as security after the date of the act may be greater than over property pledged before; and this act deals only with preexisting mortgages. Because the act is retroactive in terms and as here applied purports to take away rights of the mortgagee in specific property, another provision of the Constitution is controlling.

Fourth. The bankruptcy power, like the other great substantive powers of Congress, is subject to the fifth amendment.[36] Under the bankruptcy power Congress may discharge the debtor's personal obligation, because, unlike the States, it is not prohibited from impairing the obligation of contracts. Compare *Mitchell* v. *Clark* (110 U. S. 633, 643). But the effect of the act here complained of is not the discharge of Radford's personal obligation. It is the taking of substantive rights in specific property acquired

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(72 F. (2d) 599, 601); *In re National Grain Corp.* (9 F. (2d) 802, 803); *In re Franklin Brewing Co.* (249 Fed. 333, 335); *In re Roger Brown & Co.* (196 Fed. 758, 761); *In re Pittelkow* (92 Fed. 901, 903); *Citizens Savings Bank of Paducah* v. *City of Paducah* (259 Ky. 583, 585); *Dugan* v. *Logan* (229 Ky. 512). Compare *In re Sloterbeck Chevrolet Co.* (8 F. Supp. 1023); *In re Carl* (5 F. Supp. 215); *In re Civic Center Realty Co.* (26 F. (2d) 825). Where the mortgaged property is sold free of liens for less than the amount of the liens, the bankrupt estate and not the lienholders must bear the costs of the sale (*In re Harralson* (179 Fed. 490); *In re Holmes Lumber Co.* (178, 181)). Compare *Rubenstein* v. *Nourse* (70 F. (2d) 482); *In re Dawkins* (34 F. (2d) 581).

[32] In English bankruptcy proceedings, where mortgaged property is sold under order of the commissioners, the mortgagee is permitted to bid, to prevent a sacrifice of the property, sometimes even without previous leave of court (*Ex parte Ashlay* (3 Deac. & C. 510); *Ex parte Pedder* (3 Deac. & C. 622)). Compare *Ex parte Davis* (3 Deac. & C. 504); *Ex parte Bacon* (2 Deac. & C. 181); *Ex parte Du Cane* (1 Buck. 18); *Ex parte Marsh* (1 Madd. 89).

[33] The principle of composition was first applied to the interests of secured creditors in their security, by sec. 74, added to the Bankruptcy Act by act of Mar. 3, 1933, ch. 204, sec. 1, 47 Stat. 1467 (individual debtors); by sec. 75, act of Mar. 3, 1933, ch. 204, sec. 1, 47 Stat. 1470 (agricultural compositions); by sec. 77, act of Mar. 3, 1933, ch. 204, sec. 1, 47 Stat. 1474 (railroads engaged in interstate commerce); by sec. 77B, act of June 7, 1934, ch. 424, sec. 1, 48 Stat. 912 (corporations); and by sec. 80, act of May 24, 1934, ch. 345, 48 Stat. 798 (public debtors). The constitutionality of such provision in sec. 74 was considered in *In re Landquist* (70 F. (2d) 929, 933).

[34] See *Bailey* v. *Glover* (21 Wall. 342, 346); *Mayer* v. *Hellman* (91 U. S. 496, 501); *Wiswall* v. *Campbell* (93 U. S. 347, 350); *Hanover National Bank* v. *Moyses* (186 U. S. 181, 186); *Acme Harvester Co.* v. *Beekman Lumber Co.* (222 U. S. 300, 307); *Williams* v. *U. S. Fidelity & Guaranty Co.* (236 U. S. 549, 554); *Straton* v. *New* (283 U. S. 318, 320). Also *In re California Pacific R. R. Co.*, Fed. Cas. No. 2315; *In re Jordan*, Fed. Cas. No. 7514; *In re Reiman*, Fed. Cas. No. 11673; *In re Vogle*, Fed. Cas. No. 16986; *Leidigh Carriage Co.* v. *Stengel* (95 Fed. 637, 647); *In re Swofford Bros. Dry Goods Co.* (180 Fed. 549, 556); Story on the Constitution (4th ed.), sec. 1106; Olmstead, Bankruptcy, a Commercial Regulation (15 Harv. Law Rev. 829); Levinthal, the Early History of Bankruptcy Law (66 U. of Pa. Law Rev. 223, 225).

[35] The oft-quoted definitions of the bankruptcy power indicate its broad scope. When in *In re Klein* (reported in a note to *Nelson* v. *Carland* (1 How. 265, 277)) the constitutionality of the Bankruptcy Act of 1841 was challenged because it brought within its scope insolvent debtors other than traders and provided for voluntary proceeding, Mr. Justice Catron, sitting in circuit, said: "I hold it [the bankruptcy power] extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress." Judge Blatchford, when sustaining the provision for composition in *In re Reiman* (Fed Cas. No. 11673, p. 496), said that the subject of bankruptcy cannot properly be defined as "anything less than the subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief." And Mr. Justice Hunt, sitting in that case, on appeal to the Circuit Court said that "whatever relates to the subject of bankruptcy is within the jurisdiction of Congress" (Fed. Cas. No. 11675, p. 501).

[36] For instance, the war power, *Ex parte Milligan* (4 Wall. 2, 119; *Ocha* v. *Hernandez*, 230 U. S. 139, 153–4; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 155). The power to tax (*United States* v. *Railroad Co.*, 17 Wall. 322; *Boyd* v. *United States*, 116 U. S. 616; *Nichols* v. *Coolidge*, 274 U. S. 531, 542; *Blodgett* v. *Holden*, 275 U. S. 142, 147; *Barclay & Co.* v. *Edwards*, 267 U. S. 442, 450; *Heiner* v. *Donnan*, 285 U. S. 312, 326). The power to regulate commerce (*Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 336; *United States* v. *Joint Traffic Association*, 171 U. S. 505, 571; *Carrol* v. *Greenwich Insurance Co.*, 199 U. S. 401 410; *United States* v. *Lynah*, 188 U. S. 445, 471; *United States* v. *Crees*, 243 U. S. 316, 326). The power to exclude aliens (*Wong Wing* v. *United States*, 163 U. S. 228, 236, 237–8). Compare *Perry* v. *United States* (294 U. S. 330).

by the bank prior to the act. In order to determine whether rights of that nature have been taken, we must ascertain what the mortgagee's rights were before the passage of the act. We turn, therefore, first to the law of the State.

Under the law of Kentucky, a mortgage creates a lien which may be foreclosed only by suit resulting in a judicial sale of the property (Civil Code of Practice, secs. 375, 376; *Insurance Co. of North America* v. *Cheatham*, 221 Ky. 668, 672). While mere default does not entitle the mortgagee to possession (*Newport & Cincinnati Bridge Co.* v. *Douglass*, 12 Bush 673, 705), section 299 of the Code provides that, in an action for the sale of mortgaged property a receiver may be appointed if it appears "that the property is probably insufficient to discharge the mortgage debt", (*Mortgage Union of Penn.* v. *King*, 245 Ky. 691); and where there is (as here) a pledge in the mortgage of rents, issues, and profits, and provision for appointment of a receiver, the mortgagee is entitled as of right to have a receiver appointed to collect them for his benefit (*Brasfield & Son* v. *Northwestern Mutual Life Insurance Co.*, 233 Ky. 94; *Watt's Adm'r* v. *Smith*, 250 Ky. 617, 630). Under section 374 of the Code a sale may be ordered at any time after default. Under Carroll's Statute (1930) (secs. 2362, 2364), there must be an appraisal before the sale; and if the sale brings less than two-thirds of the appraised value the mortgagor may redeem within a year by paying the original purchase money and interest at 10 percent. But inadequacy of price is not alone ground for setting aside a sale (*Kentucky Joint Land Bank of Lexington* v. *Fitzpatrick*, 237 Ky. 624). No provision permits the mortgagor to obtain a release or surrender of the property before foreclosure without paying in full the indebtedness secured. Nor does any provision prohibit a mortgagee from protecting his interest in the property by bidding at the foreclosure sale. Thus, the controlling purpose of the law of Kentucky was and is that mortgaged property shall be devoted primarily to the satisfaction of the debt secured; and the provisions of its law are appropriate to ensure that result

For the rights acquired and possessed by the mortgage under the law of Kentucky, the act substituted only the following alternatives:

(A) Under paragraph 3, the mortgagee may, if the bankrupt so requests, assent to a so-called "sale" by the trustee to the bankrupt at a so-called "appraised value"; and upon such assent an implied promise arises to purchase the property on the terms prescribed in that paragraph. But, the transaction would not confer upon the mortgagee the ordinary fruits of an immediate sale; nor would the agreement of sale, if performed by the bankrupt, result in payment of the appraised value. The mortgagee would not get the ordinary fruits of an immediate sale on deferred payments; for the bankrupt would make no down payment at the time of taking possession and would give no other assurance that payments promised would in fact be made. And, if all such payments were duly made, the sale would not be at the appraised value; for the value of money (even if there were no risk) is obviously more than 1 percent.[37] By restricting, throughout the period of 6 years, the annual interest on the deferred payments to 1 percent, a sale at much less than the appraised value is prescribed. The aggregate payments of principal and interest prescribed would in no year before the end of the sixth be as much as 6 percent on the appraised value.[38] Moreover, before any deferred payment of the purchase price is made, there is serious danger that the bank's investment might be further impaired. The mortgaged property might be lessened in value by waste. It might become burdened with the liens for accruing unpaid taxes;[39] for, while interest at the rate of 1 percent of the appraised value of the Radford farm is $44.45, the present annual taxes (plus insurance premium) are, as stipulated, $105. Thus, if the alternative offered by paragraph 3 were accepted, the transaction would result merely in a transfer of possession to the bankrupt for 6 years with an otherwise unsecured promise to purchase at the end of the period for a price less than the appraised value.

(B) If the mortgagee refuses to consent to the agreement to sell under paragraph 3, he is compelled by paragraph 7 to surrender to the bankrupt possession of the property for the period of 5 years; and during those years the bankrupt's only monetary obligation is to pay a reasonable rental fixed by the court. There is no provision for the payment of insurance or taxes, save as these may be paid from the rental received. During that period the bankrupt has an option to purchase the farm at any time at its appraised, or reappraised, value.[40] The mortgagee is not only compelled to submit to the sale to the bankrupt, but to a sale made at such time as the latter may choose. Thus the bankrupt may leave it uncertain for years whether he will purchase; and in the end he may decline to buy. Meanwhile the mortgagee may have had (and been obliged to decline) an offer from some other person to take the farm at a price sufficient to satisfy the full amount then due by the debtor. The mortgagee cannot require a reappraisal when, in its judgment, the time comes to sell; it may ask for a reappraisal only if and when the bankrupt requests a sale. Thus the mortgagee is afforded no protection if the request is made when values are depressed to a point lower than the original appraisal. While paragraph 7 declares that the bankrupt's possession is "under the control of the court", this clause gives merely supervisory power. Such control leaves the court powerless to terminate the option unless there has been the commission of waste or failure to pay the prescribed rent.

Fifth. The controlling purpose of the act is to preserve to the mortgagor the ownership and enjoyment of the farm property. It does not seek primarily a discharge of all personal obligations—a function with which alone bankruptcy acts have heretofore dealt. Nor does it make provision of that nature by prohibiting, limiting, or postponing deficiency judgments, as do some State laws.[41] Its avowed object is to take from the mortgagee rights in the specific property held as security; and to that end "to scale down the indebtedness" to the present value of the property.[42] As here applied it has taken from the bank the following property rights recognized by the law of Kentucky:

1. The right to retain the lien until the indebtedness thereby secured is paid.

2. The right to realize upon the security by a judicial public sale.

3. The right to determine when such sale shall be held, subject only to the discretion of the court.

4. The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

Strong evidence that the taking of these rights from the mortgagee effects a substantial impairment of the security is furnished by the occurrences in the Senate which led to the adoption there of the amendment to the bill declaring that the act "shall apply only to debts existing at the time this act becomes effective." The bill as passed by the House applied to both preexisting and future mortgages. It was amended in the Senate so as to limit it to existing mortgages, and as so amended was adopted by both Houses pursuant to the report of the conference committee.[43] This was done because in the Senate it was pointed out that the bill, if made applicable to future mortgages, would destroy the farmer's future mortgage credit.[44]

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[37] In no State of the Union, in 1921, was the maximum lawful rate of interest less than 6 percent per annum; and in only two States was the legal rate as low as 5 percent (Ryan, Usury and Usury Laws (1924), pp. 28–31). In Kentucky 6 percent is both the legal and the lawful rate (Carroll's Kentucky Statute (1933), secs. 2218, 2219).

[38] The prescribed payment (interest) for the first year is 1 percent on the appraised value. The prescribed payment for the second year is 3½ percent thereof (1 percent for interest, 2½ percent on account of principal). The prescribed payment for the third year is 2½ percent of the principal and as interest 1 percent on 97½ percent of the principal. The prescribed payment for the fourth year is 5 percent on account of the principal and as interest, 1 percent on 95 percent of the principal. The prescribed payment for the fifth year is 5 percent on account of principal, and as interest, 1 percent on 90 percent of the principal. The prescribed payment at the end of the sixth year is 85 percent of the principal, and as interest 1 percent of 85 percent of the principal. The present value calculated on a 6-percent basis of all deferred payments (principal and interest) would be only 76.6 percent of the appraised value. In other words, the agreement to sell if assented to by the mortgagee would require him to relinquish his security, not for its appraised value in cash, but for deferred payments, which, if met, would yield (on a 6-percent basis) only 76.6 percent of the appraised value.

[39] When the decree complained of was issued there had already been defaults in tax payments continuing more than 2 years.

(See p. 1.)

[40] This is the construction given to paragraph 7 by both of the lower courts, by both of the parties in their briefs and oral arguments here, and, so far as appears, by all other courts and judges that have passed upon the act, except District Judge Lindley, who, in *In re Miner* (9 F. Supp. 1), held that paragraph 7, as well as paragraph 3, was conditioned upon the mortgagee's consent to a sale to the debtor at the appraised value. See also John Hanna, Agriculture and the Bankruptcy Act (19 Minn. L. Rev. 1, 19, 20; Report of Judiciary Committee, No. 370, p. 2, 74th Cong., 1st sess., Apr. 1, 1935, on H. R. 5452). We refrain from discussing this question of construction as well as some others raised which are deemed unfounded.

[41] This has been done by recent State legislation. Compare Arizona, 1933, ch. 88; Arkansas, 1933, Act No. 57; see *Adams* v. *Spillyards* (61 S. W. (2d) 686); California, 1933, ch. 793; Idaho, 1933, ch. 150; Kansas, 1935, H. B. 299; Louisiana, 1934, Act No. 28; Minnesota, 1933, ch. 339; Montana, 1935, H. B. 16; Nebraska, 1933, ch. 41; New Jersey, 1933, ch. 22; see *Vanderbilt* v. *Brunton Piano Co.*, 169 A. 177; New York, 1933, ch. 794—1934, ch. 277—1935, ch. 2; North Carolina, 1933, ch. 36; North Dakota, 1933, ch. 155; South Carolina, 1933, Act No. 264; South Dakota, 1933, ch. 138—1935 H. B. 109; Texas, 1933, ch. 92; see *Langever* v. *Miller*, 76 S. W. (2d) 1025.

[42] See Senate Report No. 1215 on S. 3580, May 28, 1934, p. 3; House Report No. 1898 on H. R. 9865, June 4, 1934, p. 4, incorporating as a part thereof a memorandum of Representative LEMKE.

[43] See conference report, June 18, 1934 (CONGRESSIONAL RECORD, 73d Cong., 2d sess., vol. 78, pp. 12376, 12491).

[44] Senator BANKHEAD said: "If it applied only to existing mortgages, I should be glad to support it; but here is a program presented, not limited to existing mortgages but a permanent program for the composition of mortgages. When a farmer goes to his advancing merchant, or goes to his banker, or applies to an insurance company for a loan under this bill, I want to know—and I am inquiring with earnest anxiety about it—what effect is it going to

Sixth. Radford contends that these changes in the position of the bank wrought pursuant to the act, do not impair substantive rights, because the bank retains every right in the property to which it is entitled. The contention rests upon the unfounded assertion that its only substantive right under the mortgage is to have the value of the security applied to the satisfaction of the debt. It would be more accurate to say that the only right under the mortgage left to the bank is the right to retain its lien until the mortgagor, sometime within the 5-year period, chooses to release it by paying the appraised value of the property. A mortgage lien so limited in character and incident is, of course, legally conceivable. It might be created by contract under existing law.[45] If a part of the mortgaged property were taken by eminent domain a mortgagee would receive payment on a similar basis.[46] But the Frazier-Lemke Act does not purport to exercise the right of eminent domain; and neither the law of Kentucky nor Radford's mortgages contain any provision conferring upon the mortgagor an option to compel, at any time within 5 years, a release of the farm upon payment of its appraised value and a right to retain meanwhile possession, upon paying a rental to be fixed by the bankruptcy courts.

Equally unfounded is the contention that the mortgagee is not injured by the denial of possession for the 5 years, since it receives the rental value of the property.[47] It is argued that experience has proved that 5 years is not unreasonably long, since a longer period is commonly required to complete a voluntary contract for the sale and purchase of a farm; or to close a bankruptcy estate; or to close a railroad receivership. And it is asserted that Radford is, in effect, acting as receiver for the bankruptcy court. Radford's argument ignores the fact that in ordinary bankruptcy proceedings and in equity receiverships, the court may in its discretion, order an immediate sale and closing of the estate; and it ignores, also, the fundamental difference in purpose between the delay permitted in those proceedings and that prescribed by Congress. When a court of equity allows a receivership to continue, it does so to prevent a sacrifice of the creditor's interest. Under the act, the purpose of the delay in making a sale and of the prolonged possession accorded the mortgagor is to promote his interests at the expense of the mortgagee.

Home Building and Loan Association v. *Blaisdell* (290 U. S. 398), upon which Radford relies, lends no support to his contention. There the statute left the period of the extension of the right of redemption to be determined by the court within the maximum limit of 2 years. Even after the period had been decided upon, it could, as was pointed out, "be reduced by order of the court under the statute, in case of a change in circumstances. * * *" (p. 447); and at the close of the period, the mortgagee was free to apply the mortgaged property to the satisfaction of the mortgage debt. Here the option and the possession would continue, although the emergency which is relied upon as justifying the act ended before November 30, 1939.[48]

Seventh. Radford contends further that the changes in the mortgagee's rights in the property, even if substantial, are not arbitrary and unreasonable, because they were made for a permissible public purpose. That claim appears to rest primarily upon the following propositions: (1) The welfare of the Nation demands that our farms be individually owned by those who operate them. (2) To permit wide-spread foreclosure of farm mortgages would result in transferring ownership, in large measure, to great corporations; would transform farm owners into tenants or farm laborers; and would tend to create a peasant class. (3) There was grave danger at the time of the passage of the act that foreclosure of farms would become wide-spread. The persistent decline in the prices of agricultural products, as compared with the prices of articles which farmers are obliged to purchase, had been accentuated by the long-continued depression and had made it impossible for farmers to pay the charges accruing under existing mortgages. (4) Thus had arisen an emergency requiring congressional action. To avert the threatened calamity the act presented an appropriate remedy. Extensive economic data, of which in large part we may take judicial notice, were submitted in support of these propositions.

The bank calls attention, among other things, to the fact that the act is not limited to mortgages of farms operated by the owners; that the finding of the lower courts that Radford is a farmer within the meaning of the act does not necessarily imply that he operates his farm; and that at least part of it must have been rented to another, since a tenant is joined as defendant in the foreclosure suit. Section 75 of the Bankruptcy Act (to which this act is an amendment) provides, in subsection (r), that "the term 'farmer' means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations." Thus the act affords relief not only to those owners who operate their farms but also to all individual landlords the principal part of whose income is derived from the farming operations of share croppers or other tenants; and, among these landlords, to persons who are merely capitalist absentees.[49]

It has been suggested that the number of farms operated by tenants was very large before the present depression; [50] that the increase of tenancy had been progressive for more than half a century; [51] that the increase has not been attributable, in the main, to foreclosures; [52] and that, in some regions, the increase in tenancy has been marked during the period when farm incomes were large and farm values, farm taxes, and farm mortgages were rising rapidly.[53]

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have upon those credit facilities for the farmers of this country." (id. p. 12074.)

Senator Fess: "It does seem to me that we might destroy the credit which he insists the farmers have, because everyone realizes that by the passage of this bill we may be making it impossible for the farmer in the future to borrow money" (id. p. 12075).

Representative PEYSER expressed the same view: "I believe that many of the Members are overlooking a very vital point in connection with this legislation; that is, the fact that you are removing from the farmer the possibility of securing any mortgage assistance in the future. I believe in the enactment of this law and the scaling down of values you are going to take away the possibility of help that may be needed by these farmers in the future" (id. p. 12137).

[45] Many instances can be found of mortgages which provide that parcels of the mortgaged property shall be released upon payment of fixed amounts or upon payment of their value upon an appraisal therein provided for. See 1 Jones, Mortgages (8th ed., 1928), sec. 98. Compare *Clarke* v. *Cowan* (206 Mass. 252).

[46] See 2 Jones, Mortgages (8th ed., 1928), sec. 843.

[47] Counsel for the debtor suggests that the reasonable rental provided for in par. 7, is more than the secured creditor ordinarily receives in bankruptcy, since interest on secured as well as unsecured claims ceases with the filing of the petition. But the rule relied upon applies only when the secured creditor, having realized upon his security, is seeking as a general creditor to prove for the deficiency against the bankrupt estate (*Sexton* v. *Dreyfus*, 219 U. S. 339). It has no application when the mortgagee has a preferred claim against proceeds realized by the trustee from a sale of the security free of liens (*Coder* v. *Arts*, 213 U. S. 223, 228, 245, affirming 152 Fed. 943, 950; *People's Homestead Association* v. *Bartlette*, 33 F. (2d) 561; *Mortgage Loan Co.* v. *Livingston*, 45 F. (2d) 28, 34).

[48] As by sec. 75 the petition of the farmer-mortgagor may be filed at any time within 5 years after March 3, 1933, and the period of the possession and of the option extends for 5 years, the provision might bar enforcement of an existing mortgage until 1943.

Counsel for Radford contends that the 5-year provision of paragraph 7 is not inflexible because, under the rule of *Chastleton Corporation* v. *Sinclair* (264 U. S. 543) it would cease to be effective on the termination of the emergency which is relied upon to justify the act. But the act does not make the 5-year option period dependent upon the continuance of a national emergency; and the options conferred upon the farmer-owner show that it was the needs of the particular debtor to which consideration was given.

[49] In 1930, only 56 percent of the farm-mortgage debt of the country rested on farms operated by their owners (the Farm Debt Problem, letter from the Secretary of Agriculture, House Doc. No. 9, p. 9, 73d Cong., 1st sess.). Of the landlords of farms throughout United States: "More than a third are engaged in agricultural occupations, nearly another third are retired farmers, and the remaining third are in nonagricultural occupations, mostly country bankers, merchants, and professional men in the country towns and villages who have either come into farm ownership through inheritance or marriage, or have purchased farms for purposes of investment or speculation" (Yearbook of Agriculture (1923), p. 538). "Furthermore, the percentage of cases in which landlords were remote from their farms is higher in some of the more recently developed farming regions than in some of the older farming regions. Thus, in eastern North Dakota 40 percent of the tenant farms were owned by landlords not residing in the same county, and the proportion is nearly as large in central Kansas and in Oklahoma" (id., p. 535).

[50] Of the 6,288,648 farms in 1930, 42.4 percent were operated by tenants. The percentage in Kentucky operated by tenants was 35.9 percent; in Iowa, 47.3 percent; in Georgia, 68.2 percent. In the South, 1,790,783 families were working as tenant farmers. See Hearings, March 5, 1935, on S. 2367, the bill to create the Farm Tenant Homes Corporation, pp. 6, 14, 15, 16, 18, 39, 70, 72, 75, and S. Rept. 446, 74th Cong., 1st sess., April 11, 1935.

[51] During the half century prior to the present business depression, every decennial census recorded a progressive increase in farm tenancy. Of the 4,008,907 farms in the United States in 1880, 25.6 percent were operated by tenants; of the 6,448,343 farms in 1920, 38.1 percent were operated by tenants (Farm Tenure, Census of 1920, Agriculture, vol. V, p. 133, t. 11). The percentage of improved farm land operated by owners in 1920 was only 46.8 (Farm Ownership and Tenancy, Yearbook of Agriculture (1928), p. 609).

[52] "Causes underlying this upward trend of tenancy are complex and obscure. The trend has apparently continued through the various shades of adversity and prosperity. Farms operated by managers are not classed with tenancy. As has been pointed out before, the best, most productive lands have the greatest tenancy. Apparently tenancy does not thrive on poor lands. It is hardly thinkable that high productiveness is a result of tenancy. It is a fact, however, that the largest up-trend in the yield of corn per acre is in the area of greatest tenancy" (Iowa Yearbook of Agriculture (1931), p. 349). In Iowa, 1927, tenant-operated acres were 53.9 percent of the total acres in farms. In 1930 the percentage was 54.8; in 1931, it was 55.4. In 1932 it was 57.7; in 1933, 58.6. Id. (1932) p. 168; (1933) p. 213. See also Yearbook of Agriculture (1923), pp. 539–547; Turner, Ownership of Tenant Farms in the United States Bull. No. 1432; and Ownership of Tenant Farms in North Central States, Bull. No. 1433, U. S. Dept. of Agriculture (1926).

[53] "The increase in tenancy in the West North Central States is without doubt the result of the price situation. Land bought in the period of high prices could not be paid for, with the result

We have no occasion to consider either the causes or the extent of farm tenancy; or whether its progressive increase would be arrested by the provisions of the act. Nor need we consider the occupations of the beneficiaries of the legislation. These are matters for the consideration of Congress; and the extensive provision for the refinancing of farm mortgages which Congress has already made shows that the gravity of the situation has been appreciated.[54] The province of the Court is limited to deciding whether the Frazier-Lemke Act as applied has taken from the bank without compensation, and given to Radford, rights in specific property which are of substantial value. Compare *Ochoa* v. *Hernandez* (230 U. S. 139, 161); *Loan Association* v. *Topeka* (20 Wall. 655, 662, 664); *In re Dillard* (Fed. Cas. No. 3912, p. 706). As we conclude that the act as applied has done so, we must hold it void. For the fifth amendment commands that, however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

Reversed.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its reading clerks, announced that the House had passed, without amendment, the bill (S. 1023) to provide for the payment of a military instructor for the high-school cadets of Washington, D. C.

The message also announced that the House insisted upon its amendment to the bill (S. 2276) to authorize participation by the United States in the Interparliamentary Union, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. McREYNOLDS, Mr. BLOOM, and Mr. FISH were appointed managers on the part of the House at the conference.

PUERTO RICAN HURRICANE RELIEF COMMISSION

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the joint resolution (S. J. Res. 88) to abolish the Puerto Rican Hurricane Relief Commission, and transfer its functions to the Secretary of the Interior, which was, on page 1, line 5, to strike out "Rica" and insert "Rico."

Mr. TYDINGS. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

AGRICULTURAL ADJUSTMENT ADMINISTRATION

The Senate resumed the consideration of the bill (S. 1807) to amend the Agricultural Adjustment Act, and for other purposes.

Mr. SMITH. Mr. President, section 7 of House bill 8052, which I have offered as an amendment in the nature of a substitute, merely authorizes the Secretary to hold hearings in order to determine whether or not to refer an alleged violation of a license to the Attorney General for appropriate action.

Mr. BYRD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Virginia?

Mr. SMITH. I yield.

Mr. BYRD. I have not heard the Senator explain fully the licensing clause in section 4, subsection 3. There is considerably more to it than the Senator has covered.

Mr. SMITH. I think the text of the subsection explains itself fully.

Mr. BYRD. I should like to ask the Senator if I am correct in my interpretation that under clause 2, 50 percent of the handlers of any given product may impose licenses on the producers providing the producers prepare their own products for marketing?

Mr. SMITH. The provision reads:

(2) To make effective any marketing plan set forth in any marketing agreement (or appendix thereto) signed by the persons handling not less than 50 percent of the volume of the business done in the respective classes of industrial or commercial activity specified in such agreement.

Mr. BYRD. A producer must have handlers, of course, in order to handle his product; and would not the effect of that provision be that 50 percent of the handlers can in effect license the producers?

Mr. BANKHEAD. Let me call the attention of both Senators to the provision at the bottom of page 7, in line 22, which reads:

No license issued under this title shall be applicable to any producer in his capacity as a producer.

Mr. BYRD. But, Mr. President, the Senator has not stated that a producer who prepares for market his products becomes a processor under the terms of the original act.

Mr. SMITH. No. I should like to call the Senator's attention to the language on page 7, lines 22 and 23, quoted by the Senator from Alabama [Mr. BANKHEAD]:

No license issued under this title shall be applicable to any producer in his capacity as a producer.

Where a producer processes and distributes his own products and is restricted to the processing and the distribution of his own products, I do not think he should be required to be licensed.

Mr. BYRD. Will the Senator accept an amendment to clarify that provision?

Mr. SMITH. I will.

Mr. BYRD. I think it should be changed, because, under the regulation as now proposed, any producer who prepares for market his own product becomes subject to a license.

Mr. SMITH. I think I ought unhesitatingly to say that, in my opinion, it is nothing but fair, where a producer processes and distributes his products and his alone, that he should not be subject to a license.

Mr. BYRD. Mr. President, in addition to that I am very doubtful of the wisdom of permitting 50 percent of the handlers of a given product to license the producers in the entire industry. I should like to have the judgment of the Senator on that point, and as to the advisability of providing that at least 75 percent of the producers shall agree when any license is placed on certain agricultural products.

Mr. SMITH. I think the percentage is a question that should be considered, not only as to the percentage of the producers, but the volume of the product. I can recall cases where 50 percent of the producers might represent but 25 percent of the volume.

Mr. BYRD. This measure as now written proposes to permit 50 percent of the handlers to license a given product, and I ask the Senator if he will not accept an amendment to the effect that no license shall be imposed on any given agricultural product unless approved by 75 percent of the producers thereof?

Mr. SMITH. I would be willing to accept such an amendment; I think that would be fair.

Mr. BYRD. Both in quantity and in number.

Mr. SMITH. I think there should be a provision that the volume should be connected with the number of producers.

Mr. BYRD. But the Senator agrees with me that under the pending measure that is not done, for 50 percent of the handlers may now license a given product and, in effect, license all the producers of that product?

Mr. KING. Mr. President, may I inquire of the Senator from Virginia upon what theory—and I am asking the question for information—can we defend a legislative declaration by Congress, if 75 percent or 80 percent or 60 percent or 81 percent of people engaged in any activity shall vote one way, that all the other persons engaged in such activity shall be subject to their decision, affecting their

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that it is now operated by tenants" (Yearbook of Agriculture, 1932, p. 494). From 1910 to 1920, farm mortgage debt increased from $3,320,470,000 to $7,857,700,000. See The Farm Debt Problem, H. Doc. No. 9, p. 5, 73d Cong., 1st sess. In 1910 the total acreage of farm land was 878,798,325; in 1920, it was 955,883,715 (Census of 1920, Agriculture, vol. V, p. 32, t. 3). The greatly increased local tax rate, in connection with increased land values, has been suggested as being an important cause of increasing farm tenancy (hearings on S. 2367, p. 16). The average value of farm property per acre in 1880, was $22.72; in 1920, $81.52; in 1930, $58.01 (Census of 1930, Agriculture, vol. II, p. 10, t. I). Farm property taxes in 1910 amounted to approximately $268,000,000; in 1920, to $452,000,000; in 1932, to $629,000,000. See The Farm Debt Problem, supra, p. 21.

[54] See Note 4.

personal rights, their individual rights, and their property rights?

Mr. SMITH. I am surprised to hear that question asked by the Senator from Utah, because the very genius of our Government is majority rule. I think the Senator from Utah is in this body because a majority selected him to come here. I do not know that I would have joined them, but I say he is here as a result of a majority vote. I do not know what right the minority who did not vote for him have in the premises.

Mr. KING. Mr. President, will the Senator yield?

Mr. SMITH. I yield.

Mr. KING. I am surprised that the Senator from South Carolina, who is a man of great perspicacity and a great deal of wisdom, although he is frequently wrong, cannot distinguish between the political right to vote for officials and the right to control one's own product, subject, of course, to reasonable rules and regulations and to the power of the Government for tax purposes. Obviously there is such a wide distinction that I am amazed the Senator does not comprehend it.

Mr. SMITH. The right to vote was exercised by both the majority and the minority, but the minority had to acquiesce in the will of the majority. In the exercise of the voting privilege to determine a marketing system, a 75-percent majority vote is generally a high ratio, for 25 percent can almost always be depended upon to go contrary, even though it is to their detriment to do so. I think the principle is found in the result and not in the exercise of the right. The producers have a right to vote if we adopt the system, although I am not particularly enamored of it, I will say.

Mr. CAREY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Wyoming?

Mr. SMITH. I yield.

Mr. CAREY. I note that the vote is not based on the number who are engaged in the business but on the volume of business.

Mr. SMITH. Yes.

Mr. CAREY. Does not that mean that a few men who might be doing a greater part of the business could dictate to the smaller fry in a particular line?

Mr. SMITH. No. The bill reads:

thereto) signed by the persons handling not less than 50 percent of the volume of the business done in the respective classes of industrial or commercial activity specified by such agreement.

Now:

(3) To make effective the marketing plan set forth in any proposed marketing agreement (or appendix thereto), on which a hearing has been held, whenever the Secretary, with the approval of the President, determines—

(a) That the refusal or failure to sign such proposed agreement by the persons handling more than 50 percent of the volume of business done in any class of industrial or commercial activity specified therein tends to prevent the effectuation of the declared policy with respect to the commodity.

Mr. CAREY and Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Does the Senator from South Carolina yield; and if so, to whom?

Mr. SMITH. I yield first to the Senator from Wyoming.

Mr. CAREY. Say, for example, that in the packing industry three or four packers handle 51 percent of the business. This provision of the bill, if adopted, would mean that they could control as against perhaps a hundred other packers who were doing a smaller amount of business. The control is not based on numbers; it is based on the volume of business done. So a few who are doing a large amount of business could control the industry through this provision making the basis the amount of business done.

Mr. SMITH. I had in mind, in answering the Senator from Virginia, another paragraph which pertains to marketing agreements where a certain number must come in as well as a certain volume. In my conception, the point the Senator from Wyoming makes is well taken, because two or three or four may control 51 percent of the volume of a given business, and 75 or 80 percent of the smaller ones may not be able to subscribe to the conditions that affect the 51 percent.

Mr. CAREY. I think that is entirely possible.

Mr. SMITH. I suggest that the Senator offer an amendment along that line.

Mr. President, sections 8, 9, and 10 all amend section 9 of the Agricultural Adjustment Act.

Mr. BYRD. Mr. President, before the Senator proceeds to that point I should like to have him explain the regional marketing area provision and exactly what it means, and whether it is proposed to prevent one section of the country shipping into another section.

Mr. SMITH. No; I think not. I think the marketing agreements and the conditions under which producers are willing to market their products vary with different sections of the country. In order not to do the injustice that is done by a blanket arrangement, where conditions might impose hardships on one and benefits on another, districts could be formed where the conditions are almost identical. Then the marketing agreement and the licensing could be more advantageously carried out, with the thought always in mind that there must be provision made that a given article in a certain section shall not be discriminated against as compared to that article in another region.

Mr. BYRD. But will the given article in another region be prohibited from coming into the other marketing area?

Mr. SMITH. I think not.

Mr. BYRD. Then, what is the advantage of the provision?

Mr. SMITH. It may be incidental, but I take it districts are going to be created where the freight and the consumption and the other elements which affect the trade would not make it advantageous for someone outside to ship into that district. The Senator knows, as I know, that it is a common practice for a man in one section, in order to get into a market, to go there and sell at a price with which the local people cannot possibly compete, and he does that until such time as he gets a foothold in the market and can compete with the local people under normal and ordinary conditions.

Mr. BYRD. Is it the purpose to establish zones over the country and give those zones to certain producers, or are we going to have free trade such as we now have?

Mr. SMITH. We will have free trade, as I understand, to the extent that the best interests of all those within the zone will be protected.

Mr. BYRD. The Senator would favor the principle of establishing zones and prohibiting the producers of the West from shipping to the markets of the East?

Mr. SMITH. If it is an advantage to the farmer, I am willing to do so.

Mr. BYRD. To the advantage of which farmer?

Mr. SMITH. The producer.

Mr. BYRD. The farmer within the particular zone or outside the particular zone?

Mr. SMITH. If it should be advantageous to him under the zone plan I would vote "yea", and if it should be disadvantageous I would vote "nay."

Mr. BYRD. But the Senator speaks of the farmer. What farmer? Does he mean the farmer within the zone or the farmer outside the zone?

Mr. SMITH. They will all be in a zone. Each man will ship in his own bailiwick. The Senator must not think that anybody would be left out.

Mr. BYRD. But they will be left out if they cannot ship to other zones than their own.

Mr. SMITH. I do not think there will be any marginal producers. We have marginal lands, but I do not think we will have marginal producers.

Mr. BYRD. Is it the purpose of the legislation to establish zones and prohibit shipment into a particular zone by anybody living outside of the particular zone in order to give the advantage to the farmers within such zone?

Mr. SMITH. I think not.

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Alabama?

Mr. SMITH. I yield.

Mr. BANKHEAD. In the first place, this particular feature of the bill is not one which has been sponsored by the Department. It was incorporated in the bill by the House committee in response to criticism of the broad area which might be included under the terms of the original bill. Of course the Senator understands this was originally limited to a few special crops. It was apparently the desire to get agreements with a certain percentage of the producers, but the argument was made that it might include producers from the Atlantic to the Pacific Ocean in the case of milk, for instance, in order to have a marginal agreement to supply the New York milk shippers. In response to that argument, to show that nothing of that kind was contemplated, the House committee wrote this limitation providing that a certain area would be included.

Mr. BYRD. Would anyone outside of that particular area be prohibited from shipping into that area?

Mr. BANKHEAD. Naturally they would not ship in there.

Mr. BYRD. Suppose it was an area around Washington for vegetables and milk; then the farmers outside of such area could not ship into Washington, could they?

Mr. BANKHEAD. If it should be a proper and economic market, they would be in the area.

Mr. BYRD. Suppose it was a product coming into Washington from west of the Mississippi River, it could not be within this area, could it?

Mr. BANKHEAD. Then, of course, this would not be the proper market for it.

Mr. BYRD. Then the Senator would prohibit that product from coming into this area?

Mr. BANKHEAD. Oh, no. If this is a proper and reasonable market for that particular article, it could come into this area.

Mr. BYRD. The language of the bill is "small areas of distribution." The Senator would not construe an area 2,000 miles from here as being a small area, would he? Therefore, he would prohibit shipment into this particular zone.

Mr. BANKHEAD. If it is in the Senator's mind to make the whole United States into a milk-market zone, he would destroy the purposes of the bill.

Mr. BYRD. Does the Senator favor and does the proposed legislation permit the establishment of zones, and is it the purpose to prohibit producers outside of those zones shipping into them? If that is the purpose of the bill and if that is what the bill does, we have started a procedure that is something new in this country.

Mr. BANKHEAD. The Senator may not be familiar with what has been done, but the marketing agreements which have been entered into under the act of last year carry out and accomplish that exact purpose.

Mr. BYRD. But they do not prohibit shipment, and under the licensing clause much broader powers are granted.

Mr. SMITH. I think the whole provision should have been restricted, perhaps, to the milk problem. It is the most vexatious and aggravated question in the whole category. In answer to the suggestion of the Senator from Virginia that we are entering upon a new project in the matter of zoning, the Senator must be familiar with the matter of freight rates and the zones which are created for the application of freight rates.

Mr. BYRD. We are zoned as to freight rates by reason of our location, whereas it is proposed here to zone us according to our markets. We are not zoned by legislative enactment, and we are not prohibited from shipping directly into a given area.

Mr. SMITH. I do not think this does that, either.

Mr. BYRD. That is the purpose of it, as I happen to know.

Mr. SMITH. The purpose of this provision, I think, is to regulate more particularly the distribution of milk. I am not familiar with that matter, but the Department explains that the most aggravated profiteering and racketeering that has gone on in the country has been in connection with the supply and distribution of milk.

Mr. BYRD. Why, then, does not the Senator amend the bill and confine its provisions to milk?

Mr. SMITH. There might be some other commodities involved.

Mr. BYRD. The bill applies now to every agricultural product.

Mr. SMITH. Oh, no.

Mr. BYRD. When this country undertakes to establish 48 zones and then to prohibit by legislative enactment shipments into one zone from any of the other zones, we have begun a new process of business.

Mr. McKELLAR. Would it not be unconstitutional?

Mr. BYRD. Assuredly it would be.

Mr. GEORGE. Yes; it would be clearly unconstitutional.

Mr. SMITH. As we have had the decision of the Supreme Court, when I get through explaining these unconstitutional provisions I think I shall call upon the constitutional lawyers to explain. I am talking seriously.

Mr. GEORGE. So am I. One of the difficulties about our legislation is that we have been willing to take it without any real consideration of whether it would stand the test in the courts or ought to stand up in the courts. If it is intended to establish zones which would restrict shipments, clearly it is unconstitutional. That power could not be granted. We have no authority to grant it. The Congress has no such power.

Mr. SMITH. From a layman's standpoint I have been amazed and shocked at the conduct of lawyers in this body, those who went up to the Vice President's desk and took the oath of office, those who said they had devoted their life's work to interpretation of the Constitution and the law, those who called the courthouse a temple of "justice"—God help them—who sat right here in this body with a measure so palpably unconstitutional that it almost said so, and then voted for it. Let him who is without sin cast the first stone at me. Lawyers in this body who had cut their wisdom teeth in the profession of the law, in the case of serious legislation which, outside the Senate, they would say "the damned thing is unconstitutional", yet voted for it here. God knows I should like to go back and vote in such a way that each one of us would do his duty as he saw it, regardless of any outside interference or influence.

Mr. KING. Mr. President, will the Senator permit an interruption?

Mr. SMITH. I should like to finish this thought.

The Departments are criticized for sending here propositions that are unconstitutional. What did we do when we formulated laws in our committee rooms which already the Supreme Court has said are unconstitutional? God grant that the action of the Supreme Court may bring us to a realization of our duty under the Constitution, so that each and every one of us, according to his conception, will vote his convictions as to the right or wrong of the measures before him. We do not do it, however, and yet we come in here and criticize those who, in their zeal to aid a desperate condition—because the condition of agriculture is desperate—endeavor to aid it. Immediately a host of critics rise up and meticulously point out what they believe to be directly or indirectly unconstitutional; and yet, without any kind of criticism, we pass bills carrying billions of dollars for purposes of doubtful constitutionality.

Mr. BANKHEAD. Mr. President——

Mr. SMITH. I wish the farmers of the country could understand just what we consciously and subconsciously think of them in this body. They are the line of least resistance—yes. Other Senators know, as I know, that the minute we begin to talk about doing anything for the farmer, it falls on deaf ears, or encounters sickening indifference. We eat the farmer's food; we wear the product of his toil; but we consider him not in our legislation.

We come in here and talk about trying to expand the currency in order to lift the price of commodities. My God, unless we tie a gold block on one end and a banker on the other end, we cannot have any currency. Why should we consider a farmer or his commodity?

What is our currency based on today? We say we have $5,000,000,000 in circulation. What is it based on? Our gold is neutralized. Our silver is subsidiary. What is the volume of our currency based on today? If one of us says

"I have a gold certificate", he will be put in jail; and yet we sit here on this floor and demand "a sound currency". What is it based on now? We have $5,000,000,000 of circulation, based on what? On bonds from which the bankers are clipping the coupons, bonds based on the good faith and honor of America; and yet we come here and quibble and say, "Oh, we cannot risk fiat money." I wish the people would quit risking fiat Senators. We talk about printing-press money, but we have printing-press Senators. You know it and I know it.

God grant that the Court decision of today will bring about a recognition on the part of the voters of the country that from now on we will use the Constitution which has brought us to the glorious position we now occupy, and is thoroughly competent to take care of us in all the future.

We can relieve the depression without going outside the Constitution. We can reflate our currency without violating the Constitution as we are now doing. We never had a right to delegate the issuance of currency to anybody outside of the Congress; and yet we sit here and talk wisely—God knows, we sit here and assume to talk wisely—and contradict ourselves in every practice. We must not have fiat money, printing-press money, but what have we today? Sterilized gold and subsidiary silver, and yet we have paper money to the amount of some $4,000,000,000, based on what? On what?

Mr. BANKHEAD. Mr. President, will the Senator yield to me for a moment?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Alabama?

Mr. SMITH. Yes.

Mr. BANKHEAD. Before we leave the discussion which has followed the remarks of the Senator from Virginia and the Senator from Georgia, I wish to say that, so far as I have been able to read and analyze the bill, there is no prohibition in it against the shipment of the commodities specified which may be licensed into an area covered by a marketing agreement. It seems to have been assumed in the discussion that there was such a prohibition; but, as I construe the bill, it applied only when a local area is used for a marketing agreement, to be enforced through a license to those within the area covered by the signers of the marketing agreement. It could have no extraterritorial operation where producers were not in the area and therefore were not subject to the marketing agreement; and, on the other hand, it could have no extraterritorial effect upon handlers outside of that area. In other words, they must be under license before the provision will operate on them. So I think there is a misunderstanding, and we do not want any misunderstanding about it.

Mr. BYRD. But suppose the Secretary should refuse a license to any producer outside of a particular area: Would he then be permitted to ship into it?

Mr. BANKHEAD. He would not have to have any license if he was not in the area. He could ship where he pleased. There would be no restriction on him.

Mr. BYRD. Then, exactly what will these regional marketing agreements mean?

Mr. BANKHEAD. Naturally, the producers who are within the area will be a part of the marketing agreement, and those who are handling the product will come under the license agreement; but it applies only to those producers or handlers who are within a particular marketing-agreement area.

Mr. GEORGE. Mr. President, I desire to say for the benefit of my friend, the Senator from Alabama, that I did not venture any guess as to what the provision meant. I merely made an inquiry as to whether it did have the effect stated.

Mr. BANKHEAD. I so understood the Senator, and that is the reason why I was anxious to develop the thought before we got away from it, because I am quite clear that no construction of that sort is permissible under the bill.

Mr. BYRD. I should like to ask the Senator a question. The bill, under section 2, permits a majority of the handlers to impose licenses. Under the imposition of those licenses, quota systems can be provided for, and the flow of commerce, according to the testimony of Mr. Davis, can be regulated. Let us assume that we have a regional marketing agreement for a certain product, and that there is a national marketing agreement for the same product which is imposed by 50 percent of the handlers: Could not the Secretary, in the exercise of his discretion, prohibit shipment into the regional territory?

Mr. BANKHEAD. I assume, naturally, there would not be both a local agreement and a national agreement for the same commodity.

Mr. BYRD. There may be under the terms of the bill.

Mr. BANKHEAD. It is possible, but it is not probable or practicable. There is no reason for it. We must not assume that the Department will do an unnecessary and a foolish thing.

Mr. SMITH. Mr. President, I discussed this matter earlier in the day, not alone with those who favored the bill but with those who opposed it; and it is my judgment that this particular portion of the bill needs more definite limitations and definitions as to just what it does mean and what will be its effect on a general market.

Mr. McKELLAR. Mr. President, before the Senator goes to another subject, will he yield to me?

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Tennessee?

Mr. SMITH. Yes.

Mr. McKELLAR. I call the Senator's attention to a sentence beginning in line 17, on page 16:

> The Secretary, in the administration of this title, shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing acts of Congress, and as will tend to promote efficient methods of marketing and distribution.

I have not any objection to that so far as it goes; but so far as the cotton trade is concerned, the Senator knows that that trade now is largely controlled by three firms—I believe their names are Anderson, Clayton & Co., McFadden & Co., and the Weil Co.—together with the so-called "cooperative associations", which are no longer cooperative associations, but are just other handlers of cotton.

I wonder if the Senator would not be willing to accept an amendment which would treat all legitimate dealers in cotton fairly and justly and not undertake to put them out of business for the benefit of the cooperative associations, which are now simply dealers in cotton. I have prepared an amendment of that kind, which I showed the Senator yesterday or day before yesterday; and I am wondering if he would not be willing to accept the amendment, which I will read:

> No such association shall handle the products of nonmembers in excess of the amount necessary to handle member products and in any case not exceeding 25 percent in value of the products handled for members, and there shall be included in nonmember business every transaction in which the association as such, or any agency thereof, can make a profit to which the contracting producer is not entitled, or incur a loss for which the contracting producer is not liable and every transaction in commodities delivered by persons having no legal or equitable right in their production.

Such an amendment would prevent, through the Government's attitude toward cooperative associations, doing away with the small-business cotton dealer.

Mr. SMITH. Mr. President, I think that the cooperative associations ought to deal with the products of their members, and not become organizations for the handling of products of those who are not members, and therefore gradually become another element marketing purely for individual benefit. I would be very glad to accept the amendment.

Mr. McKELLAR. Mr. President, I will offer the amendment now, if the Senator will accept it, and let it go into the bill. I offer the amendment which I have just read.

Mr. SMITH. Let it lie on the table as presented until we get to individual amendments.

Mr. McKELLAR. Let it be printed and lie on the table, and I will offer it later. I thank the Senator very much.

Mr. BYRD. Mr. President, will the Senator permit me to ask him another question?

Mr. SMITH. I yield.

Mr. BYRD. In the original bill, Senate bill 1807, there is a provision, in section 5, which would prohibit the imposition of quotas unless two-thirds of the producers approved them. That has been stricken out of the House bill. Certainly if we establish a quota system in this country the producers ought to approve it, and I ask the Senator whether he will agree to an amendment to restore the provision of the original bill, so that no quotas can be adopted without the approval of two-thirds of the producers of a particular commodity.

Mr. SMITH. It is in the pending measure now. Let the Senator turn to page 5, subsection (b), which provides:

That the issuance of such license is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored by at least two-thirds of the producers.

Mr. BYRD. Yes, Mr. President; but they can still license under section 2, which is a section entirely independent of section 3, and can impose quotas under that section.

Mr. McKELLAR. Mr. President, any effort to restrict the free intercourse of products between the States or between the various areas is manifestly unconstitutional.

Mr. BYRD. I so understand.

Mr. McKELLAR. And no provision looking to that end ought to go into the bill, and if the Senator will offer an amendment to strike it out I am quite sure it will be agreed to.

Mr. SMITH. But the Senator must not lose sight of the section of the bill to which I have just referred.

Mr. BYRD. Section 3 does not qualify section 2. Section 2 stands alone, and provides that 50 percent of the handlers can license a given product.

Mr. SMITH. I have already said to the Senator that if he desires to offer an amendment increasing that number I will be glad to accept it.

Mr. BYRD. Fifty percent of the handlers of a product should not be able to put a quota on the producers of a commodity without at least two-thirds of them approving it.

Mr. SMITH. I do not think they can under the pending bill.

Mr. BYRD. They could do it under the pending bill.

Mr. SMITH. No.

Mr. BYRD. Yes; they could. The provision to which I refer was in the original bill, but for some reason was stricken out, and I do not see why the Senator should not agree to reinsert in the pending bill the provision he had in his original measure.

Mr. SMITH. It reads:

That the issuance of such license is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored by at least two-thirds of the producers.

Mr. BYRD. Mr. President, that is only operative providing they fail under section 2 to have a license.

Mr. SMITH. Precisely, but it goes back to the producer as to what he is going to agree to.

Mr. BYRD. Mr. President, I differ with the Senator, and to make it clear, if he will offer an amendment to reinsert the provision which he had in his original bill, that no quotas may be established without approval of two-thirds of the producers, that will be all right.

Mr. SMITH. This is identically the same thing.

Mr. BYRD. Mr. President, section 2 stands alone. If the pending bill should be enacted, 50 percent of the handlers could license any agricultural product in this country, and the growers would not have any vote at all. I stand upon that statement as a Member of the Senate. That is in the bill.

Mr. SMITH. It reads:

To make effective the marketing plan set forth in any proposed marketing agreement.

The precedent upon which section 2 is established is the marketing agreement.

Mr. BYRD. I understand that, but handlers can establish a marketing agreement.

Mr. SMITH. Oh, no.

Mr. BYRD. It is provided in the bill just as clearly as can be that they can do it.

Mr. SMITH. Who makes the marketing agreement?

Mr. BYRD. There are two ways of making one. One way is for 50 percent of the handlers to make it, and if they fail to do it, the President can promulgate it, subject to approval by 75 percent.

Mr. SMITH. Oh, no; the President cannot promulgate it unless it is to eliminate an unfair practice. It reads:

To make effective the marketing plan set forth in any proposed marketing agreement.

Mr. BYRD. If the Senator will read at the bottom of page 5 the report of the House committee, he will find that it states:

The new provision adds to the present law a new class of licenses, herein called "clause (2) licenses." These licenses are to be issued to make effective a marketing plan set forth in a marketing agreement which relates to any agricultural commodity or product thereof and which is signed by the handlers of 50 percent or more of the volume of business done by the respective classes of business or industrial activity specified in the license.

That stands alone.

Mr. SMITH. Back of it is a marketing agreement which is precedent to any license or any processing and distribution. There must be incorporated in the marketing agreement what the producers desire. Then these others come in, and only them.

Mr. BYRD. Does the Senator contend that no licenses can be issued unless 75 percent of the producers approve it?

Mr. SMITH. Whatever percentage is incorporated in the law.

Mr. BYRD. Will the Senator agree to an amendment to clarify that so that it will be beyond question?

Mr. SMITH. Certainly.

Mr. President, section 13 provides the means by which State authorities and Federal authorities may get together to work in harmony, especially those in Virginia.

Section 15 appropriates 30 percent of the annual receipts from duties collected under the customs laws to the Secretary of Agriculture for certain named purposes. I hope that that will be unanimously agreed to.

Mr. BYRD. Mr. President, what is the amount of that in dollars?

Mr. SMITH. I do not know; I have not ascertained. It provides for the appropriation of 30 percent of the customs receipts. It is for the purpose of meeting the expenses.

Section 16 constitutes a restriction upon the use of receipts from processing taxes. A reading of the provision explains it.

Section 17 amends section 15 (d) of the Agricultural Adjustment Act, which authorizes the imposition of compensating taxes, so as to take account of the interests of producers as well as processors. That has been in the law. Why it was never enforced I have never been able to understand.

Section 18 corresponds roughly to section 3 (e) of the National Industrial Recovery Act, and authorizes the President, under certain specified conditions, to impose quotas or taxes upon the importation of agricultural commodities. I desire to say here for the RECORD that individually I myself do not agree to that amendment.

Mr. BYRD. What is that?

Mr. SMITH. Section 18 corresponds, roughly, to section 3 (e) of the National Industrial Recovery Act, and authorizes the President, under certain specified conditions, to impose quotas or taxes upon the importation of agricultural commodities. I wish to state here and now that I am not in favor of that paragraph in this bill.

As to section 19, the administration has no objection to its inclusion. It corresponds to Senate bill 2753, introduced by the Senator from Wisconsin [Mr. DUFFY], with reference to which the Senate Agricultural Committee has recently requested a report on the part of the Department of Agriculture.

Mr. President, I am now through giving the definitions of the amendments proposed in the House bill.

The parliamentary situation is rather confusing. I have made a motion to substitute the House bill for the Senate bill, and that motion is now pending. I should like to have a vote on substituting the House bill for the Senate bill, so that we will know definitely that we are from now on discussing directly the provisions of the House amendments as related to the organic law.

Mr. McKELLAR. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McKELLAR. Before that is done, must not the amendments first be adopted, if there are amendments?

Mr. SMITH. It is just one amendment.

Mr. McKELLAR. I know it is just one amendment, but many amendments are to be offered to that amendment. Should not the amendment be perfected first and then adopted? That is my understanding of the proper procedure. However, I am not a parliamentarian, and I am asking the Presiding Officer.

The PRESIDING OFFICER. The Chair is advised that the amendment should be perfected before being voted on.

Mr. McKELLAR. I was quite sure that was true.

Mr. McNARY. Mr. President, I think there was a common understanding earlier in the day when I suggested that the bill should be recommitted to the Committee on Agriculture, that at the conclusion of the explanation by the Senator from South Carolina [Mr. SMITH] the Senate should recess until tomorrow. Therefore, I should not wish to see any action whatsoever taken on the amendment today.

Mr. SMITH. Mr. President, if it is agreeable to the other Members of the Senate, I have no objection to a recess being taken now until 12 o'clock tomorrow, when we shall continue the consideration of this amendment.

RIO GRANDE COMPACT

Mr. ADAMS. Mr. President, I ask unanimous consent to lay aside, if necessary, the unfinished business temporarily, and to have considered House bill 7873, Calendar No. 745. It is a bill which has been passed by the House to extend a compact entered into between the States of Colorado, New Mexico, and Texas.

Congress authorized the compact 2 years ago. The compact is about to expire on June 1 of this year. The three States have ratified an extension, and they now ask the Congress to grant consent to further extension. The House, as I say, has already passed the bill.

Mr. McKELLAR. Mr. President, are the Senators from the other two or three States mentioned in favor of the extension?

Mr. ADAMS. A similar bill was introduced by the Senators from Texas, and one by myself; and I know that is true of the Senators from New Mexico.

Mr. McKELLAR. If the other Senators do not object to it, I shall not object to it.

Mr. McNARY. Mr. President, is this a request for an extension of time?

Mr. ADAMS. A 2-year compact was entered into. The compact will expire on the first of June of this year. The three States, by their legislature, have already acted to renew the compact, and they now ask Congress to concur in its extension.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (H. R. 7873), to give the consent and approval of Congress to the extension of the terms and provisions of the present Rio Grande compact signed at Santa Fe, N. Mex., on February 12, 1929, and heretofore approved by act of Congress dated June 17, 1930 (Public, No. 370, 71st Cong., 46 Stat. 767), which was ordered to a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the consent and approval of Congress is hereby given to the extension of the provisions of said Rio Grande compact, and all the terms thereof for the period of 2 years from June 1, 1935, to June 1, 1937, as heretofore ratified by the Legislature of the State of Colorado by act approved April 13, 1935, by the Legislature of the State of New Mexico by act approved February 25, 1935, and by the Legislature of the State of Texas by act approved April 18, 1935.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

The preamble was agreed to, as follows:

Whereas the duly accredited commissioners representing the States of Colorado, New Mexico, and Texas, respectively, signed the Rio Grande compact at Santa Fe, N. Mex., on the 12th day of February 1929, and which said compact was thereafter duly ratified by the legislature of each of the aforesaid States and approved by act of Congress on June 17, 1930 (Public, No. 370, 71st Cong., 46 Stat. 767); and

Whereas the legislature of each of the aforesaid States has by appropriate legislation, and pursuant to the express provisions of article 14 of said compact, extended the said compact for the term of 2 years from June 1, 1935, to June 1, 1937: Now, therefore

ROAD WORK ON INDIAN RESERVATIONS

Mr. FRAZIER. Mr. President, I ask unanimous consent for the present consideration of Senate Joint Resolution 130, Calendar No. 659, making immediately available the appropriation for the fiscal year 1936 for the construction, repair, and maintenance of Indian reservation roads. Some $4,000,000 for the purpose was included in the Interior Department appropriation, which ordinarily becomes available on the 1st of July. This joint resolution is to make it immediately available, as in the case of a number of Indian reservations no money is on hand to carry on work for the Indians who so badly need work; and especially in the Northern States, where the season is short, it is desired to get to work on the roads as soon as possible, before the 1st of July.

Mr. ROBINSON. The sum is carried in the appropriation bill?

Mr. FRAZIER. Yes.

Mr. ROBINSON. The fact is, that this joint resolution merely makes the amount immediately available?

Mr. FRAZIER. That is correct. The Department of the Interior is in favor of it.

Mr. McNARY. The Senator from Arkansas has indicated a desire to go on with the calendar in the morning. Of course, in this instance, everyone is aware of the proceedings, and what will be before the Senate. Would not the Senator be willing to wait until tomorrow, if such an order shall be entered?

ORDER FOR CONSIDERATION OF CALENDAR TOMORROW

Mr. ROBINSON. Mr. President, I ask unanimous consent that immediately following the convening of the Senate tomorrow the Senate proceed to the consideration of unobjected bills on the calendar.

Mr. McNARY. That covers the matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBINSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER. (Mr. MOORE in the chair) laid before the Senate messages from the President of the United States submitting several nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

Mr. BURKE, from the Committee on the Judiciary, reported favorably the nomination of George H. Moore, of Missouri, to be United States district judge, eastern district of Missouri, to succeed Charles B. Faris, appointed to the circuit court of appeals.

The PRESIDING OFFICER. The reports will be placed on the Executive Calendar.

If there be no further reports of committees, the clerk will state the first nomination in order on the calendar.

POSTMASTERS

The Chief Clerk proceeded to read sundry nominations of postmasters.

Mr. McKELLAR. I ask unanimous consent that nominations of postmasters on the calendar be confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered, and the nominations are confirmed en bloc.

IN THE ARMY

The Chief Clerk proceeded to read sundry nominations in the Army.

Mr. SHEPPARD. I ask unanimous consent that nominations in the Army on the calendar be confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered, and the nominations are confirmed en bloc.

That completes the calendar.

RECESS

Mr. ROBINSON. I move that the Senate take a recess until tomorrow at 12 o'clock noon.

The motion was agreed to; and (at 3 o'clock and 57 minutes p. m.) the Senate took a recess until tomorrow, Tuesday, May 28, 1935, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate May 27 (legislative day of May 13), 1935

ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY

George A. Gordon, of New York, now a Foreign Service officer of class 1 and counselor of embassy at Rio de Janeiro, Brazil, to be Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Haiti.

FEDERAL HOME LOAN BANK BOARD

John H. Fahey, of Massachusetts, to be a member of the Federal Home Loan Bank Board for the term of 6 years from July 22, 1935. (Reappointment.)

MISSISSIPPI RIVER COMMISSION

Harry N. Pharr, of Arkansas, for appointment as a member of the Mississippi River Commission, provided for by the act of Congress approved June 28, 1879, entitled "An act to provide for the appointment of a Mississippi River Commission, for the improvement of said river from the Head of the Passes near its mouth to its headwaters", vice Charles H. West, deceased.

UNITED STATES MARSHAL

Edward L. Burke, of Vermont, to be United States marshal for the district of Vermont, to succeed Albert W. Harvey, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 27 (legislative day of May 13), 1935

APPOINTMENTS, BY TRANSFER, IN THE REGULAR ARMY

First Lt. James Roy Andersen to Ordnance Department.

Second Lt. Christian Frederick Dreyer to Quartermaster Corps.

PROMOTIONS IN THE REGULAR ARMY

Don Gilmore Shingler to be captain, Corps of Engineers.

Thomas Lawson Thurlow to be first lieutenant, Air Corps.

Harry Dumont Offut to be lieutenant colonel, Medical Corps.

George Davies Chunn to be lieutenant colonel, Medical Corps.

Charles Mallon O'Connor to be lieutenant colonel, Medical Corps.

Augustus Benjamin Jones to be lieutenant colonel, Medical Corps.

Robert Hilliard Mills to be colonel, Dental Corps.

Frank Leonard Kemner Laflamme to be colonel, Dental Corps.

Frederick Herbert Moehlmann to be chaplain with the rank of captain.

APPOINTMENT IN THE NATIONAL GUARD OF THE UNITED STATES

GENERAL OFFICERS

William Armistead Gayle to be brigadier general, Adjutant General's Department, National Guard of the United States.

William Remsen Taylor to be brigadier general, National Guard of the United States.

REAPPOINTMENT IN THE OFFICERS' RESERVE CORPS

Frank Thomas Hines to be brigadier general, Reserve.

POSTMASTERS

CALIFORNIA

Emma B. Baily, Corte Madera.
George W. McMurry, Loma Linda.
Rodney McCormick, Napa.
Bertha Rooker Dal Porto, Oakley.
Mary M. Wilson, Rio Linda.
William C. O'Donnell, San Luis Obispo.
Joyce J. Hunter, Willowbrook.

IOWA

Jurgen B. Boldt, Jesup.
Thomas J. Hood, Mallard.
Anna B. Berry, Marquette.
Reva M. White, Olin.
Chris G. Wiemer, Radcliffe.
Florence M. White, Riceville.

KANSAS

Elsie J. Fuller, Alton.
Everett A. Stephenson, Little River.

NEVADA

Mabel L. Andrews, Hawthorne.
Helen C. Franklin, Wells.

NEW HAMPSHIRE

Gustave A. Lanoix, Gonic.
Joseph O. George, Gorham.
Elizabeth J. Varney, Littleton.

NEW MEXICO

Antonio F. Martinez, Santa Fe.

NEW YORK

Edward A. Rice, Freeport.
J. Frank Lackey, Tannersville.

VERMONT

Martha G. Kibby, Randolph Center.

HOUSE OF REPRESENTATIVES

MONDAY, MAY 27, 1935

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

We fervently invoke Thy blessing, O God, upon our President, our Speaker, the Congress, and all their advisers. O Spirit of Truth, move upon us, that under all circumstances we may be God-fearing men, always abounding in good works. Take from us everything that is false or insincere and that which is alien to the divine will. Bind us together by the holy sanctions of religion, and may we increase in knowledge and in power. Heavenly Father, open our eyes that we may understand that whenever we have failed to be loving we have also failed to be wise, whenever we have been blind to our neighbor we have been blind to ourselves, and when we have pained others we have hurt our own souls. Thou who art our repose in labor and our comfort in affliction, let those blessings that make heaven rich and the earth musical be with all Members who are detained through illness. In the holy name of Jesus. Amen.

The Journal of the proceedings of Friday, May 24, 1935, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Horne, its enrolling clerk, announced that the Senate had passed without amendment a bill of the House of the following title:

H. R. 2046. An act to compensate the Chippewa Indians of Minnesota for lands set aside by treaties for their future homes and later patented to the State of Minnesota under the Swamp Land Act.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 7672. An act making appropriations for the Navy Department and the naval service for the fiscal year ending June 30, 1936, and for other purposes.

The message also announced that the Senate insists upon its amendments to the foregoing bill, requests a conference with the House thereon, and appoints Mr. BYRNES, Mr. COPELAND, Mr. TRAMMELL, Mr. HALE, and Mr. KEYES to be the conferees on the part of the Senate.

HOUR OF MEETING TOMORROW

Mr. CULLEN. Mr. Speaker, I ask unanimous consent that when the House adjourn today it adjourn to meet at 11 o'clock a. m. tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

CALENDAR WEDNESDAY BUSINESS

Mr. CULLEN. In connection therewith, also, I ask unanimous consent that business in order on Calendar Wednesday of this week may be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

LEO P. KELLY, SON OF COLORADO AND HERO OF THE WORLD WAR, WHO SLEEPS AT ARLINGTON

Mr. MARTIN of Colorado. Mr. Speaker, I ask unanimous consent to insert in the RECORD a brief eulogy delivered by me at Arlington Cemetery.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. MARTIN of Colorado. Mr. Speaker, under leave granted by the House, I submit for preservation in the CONGRESSIONAL RECORD a brief eulogy delivered by me at Arlington Cemetery, May 25, 1935:

LEO P. KELLY

Leo P. Kelly was a native Coloradoan, born in 1890. He was a graduate of Colorado State university and a lawyer by profession. He was a first lieutenant in the Ninth Infantry, A. E. F., and major in the Reserves. He was twice department commander American Legion, Colorado.

At the time of his death he was on the legal staff of the Reconstruction Finance Corporation. He died at Washington, D. C., May 20, leaving a widow, Gertrude, and a son, Robert, aged 7.

The veil over the face of futurity is woven by the hand of mercy. I saw our Comrade Leo Kelly in the uniform of a young lieutenant, won in an officers' training camp, as he was preparing to leave for France. I saw him on his return, the modest possessor of the Distinguished Service Cross, awarded him by his Government for extraordinary bravery in action at Chateau Thierry.

How young and fair and full of promise life looked then. A university graduate, gifted as a lawyer, a hero of the Great War, universally beloved and popular, life was still in its glorious dawn, with promise of a long, full day. This seems but yesterday, and now, at not yet noon, we are here to lay him to rest in this necropolis of the Nation's most honored dead.

I am in no sense a militarist, but I hold firmly the conviction that among all the forces that have contributed to the making and the preservation of this great Nation, the soldier holds incontestably the first place. The sword of Washington the soldier first carved out the Nation whose destinies were later guided and molded by Washington the statesman; and the soil on which we stand, if I may borrow from the noble words of Lincoln, was dedicated as a final resting place for those who gave their lives and their service that that Nation might live.

And he would be blind to the lessons of all history who would have his country shape its policies upon the assumption that the American soldier has answered his last call to arms, has performed his last deeds of valor, and made his last sacrifice on the field of battle.

A world in which the war drum is heard no longer and the battle flags are furled is the vision of the poet and the dream of the philosopher. We pray that that day may dawn. But until that day has dawned the final safety of America will still rest in the valiant hearts of the type of man to whom we pay these sad honors here today.

Here on the commanding brow of historic Arlington, overlooking the Capital of the Nation, he will sleep surrounded by thousands of his comrades in the wars of his country. And here in Arlington, a national shrine and mecca of patriotism, on the Nation's memorial days, the men who wore the uniform, the men who carry on the tradition, and citizens from all walks of life, will pause in reverent silence and lay upon these resting places of our heroic dead the sweet flowers of patriotic homage and remembrance.

The sorrow of the widow, herself a veteran, of the aged father and mother, of the brothers and sisters, must be sweetened by solemn pride in the thought that their soldier dead so richly earned the right to an abode in this distinguished place.

The closing words of this brief eulogy shall be his, taken from a recently completed manuscript of his war recollections.

"Whenever I go now to Arlington Cemetery and pause before the Tomb of the Unknown Soldier, I feel a link with him, for he may be a buddy of mine. He may be one of three who sleep in nameless graves."

He has come again to Arlington.

JUSTICE FOR THE SOLDIERS

Mr. HILDEBRANDT. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. HILDEBRANDT. Mr. Speaker, I am one of those who have all along believed in paying what is more or less incorrectly called the bonus. I regret that on this point I must differ with our President and the head of the party to which I belong, but I have strong convictions on the subject. With all due respect to the Chief Executive, his high position, and his sincerity, it seems to me that he is greatly in error.

I say this, moreover, as one who deprecates war. Today, in the light of the developments and disclosures of recent years, there are few who have a good word to say for American participation in the World War. Those who, in the dark days of that fearful conflict, were called "unpatriotic" and "pro-German" and "slackers", and other even less complimentary names, are now vindicated. Practically nobody at the present time contends that any benefit resulted from the World War. On the other hand, it is almost universally admitted that much evil came of it. It is equally certain that great harm would follow participation in any other war—unless our country were actually invaded, which is highly improbable.

The foes of war in general are among the most earnest defenders of paying adequate compensation to the men who served in 1917 and 1918. They regret that we ever entered that conflict. They see the dreadful price in human lives, suffering, and tremendous expense that we had to pay—and are still paying. But they feel that the participants were entitled to generous consideration and that no technicalities should be invoked to avoid payment to them.

It is not answer to say that the bonus certificates are not yet due. They should be due. They never should have been post-dated.

When American citizens were drafted to fight to save the loans of Wall Street bankers to the Allies, there was no way of post-dating the obligation. Conscription meant immediate service. The conscript could not wait until 1935 or 1945, or even a single day—unless temporarily excused by the draft board, and when excused, it was only for a short time at the most. Eventually, the drafted man had to go to the front and risk his life in a conflict that, it is now only too obvious, we ought to have kept out of.

It is a poor rule that does not work both ways. "What is sauce for the goose is sauce for the gander." A Government that demands immediate, unhesitating obedience to a command to engage in military conflict thousands of miles away on foreign territory ought to be immediate and unhesitating in recognizing its obligation to the men who so unselfishly bowed to the summons. Governments ought to play fair with their people. As a matter of fact, they often fail to. Personally, I should like to see my own Government observe a better standard of ethics in this regard than some of the autocratic and tyrannical governments of Europe observe.

A child sometimes must get its fingers burned before it learns to stay away from the stove. The same rule ought to apply to a nation. Maybe it is well for the American people that the last war cost us so severely. Maybe it would be well for it to cost us still more. If it proves expensive

enough, possibly we shall be more sensible next time and stay out of another war in which we have no genuine stake.

I believe in honestly, frankly, and without evasion meeting the obligation of discharging an undeniable obligation to the veterans of the World War. I believe in it because the money is, as a matter of conscience and fairness, due them. I believe in it also because we let the profiteers get theirs, and it is little enough to allow the ex-soldiers the bonus. I believe in it, too, because I should like to see the last war made so expensive and odious that we shall not permit ourselves to be misled into another trap of that kind.

AIR BASES ON THE CANADIAN BORDER

Mr. LUDLOW. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

Mr. LUDLOW. Mr. Speaker, I have just introduced a bill which reads as follows:

Be it enacted, etc., That it shall be unlawful for any officer of the Army, Navy, or Marine Corps to give expression to views touching international questions in an address, interview for publication, articles written for publication, or in testimony before any committee of Congress or other legislative body unless such statement has first been submitted to the President of the United States and his approval thereof has been obtained.

SEC. 2. Any violation of this Act shall be punished by a fine of not more than $5,000.

The bill I have introduced is intended to strengthen the President in his worthy purpose to keep the United States from becoming involved in international complications, and perhaps war, by the provocative utterances of officers of the armed forces. The passage of this bill would be a fitting finale of the recent incident when the President found it necessary to counteract with a stirring rebuke the testimony of two high ranking Army officers who appeared before the House Military Committee and advocated camouflaged air bases along the Canadian border.

In my opinion the passage of this bill would have a tremendously beneficial effect on our international relations, besides being most reassuring to the President by way of showing to him that the law-making body, composed of the representatives of the people of the Nation, indorses the extraordinary and unprecedented action he was forced to take in this matter. Undoubtedly when he issued his rebuke he reflected the will of the people of America, but so far his is the only voice in authority that has spoken. If, now, the Congress of the United States, representing all the people, will pass the bill I have introduced it will complete the action, so that in this visual way not only Britain but the whole world may know that the will of America is for peace and for upholding the ancient traditions of confidence and good faith between us and the other members of the family of nations.

My action in introducing this bill carries with it no criticism, expressed or implied, of the motives of anyone. Certainly I have no criticism for that grand patriot and soldier, JOHN J. MCSWAIN, Chairman of the House Committee on Military Affairs, who freely and gladly offered his life to his country in the World War, entering the first training camp and serving with the Infantry overseas. His has been a life of service and sacrifice that does not call for defense but for universal adulation. Nor am I one of those who think that he did any wrong in authorizing the publication of the testimony which the officers gave before his committee. I think he did exactly right. If such terrible testimony must be given—terrible in its implications and in its potentialities for harm—it were better to bring it out into the open where the whole world could see it.

Nor do I criticize the purposes that motivated Brig. Gen. Charles E. Kilbourne, the Assistant Chief of Staff, and Brig. Gen. F. M. Andrews, the officers who gave this startling testimony. I can disagree violently with the propriety of giving such testimony without challenging their motives. I can praise them as highly trained and efficient military men and at the same time deplore the fact that they are always looking at things from a military and not from a peace viewpoint.

With the best of intentions they have committed the major error of the century. No one doubts that their aim was to serve their country, but if they had plunged a dagger into her heart, they could not have hurt her more. Let us consider General Kilbourne's testimony when he said:

We cannot go out in the military line along the Canadian border but we can legitimately extend the advantages of landing fields and commercial fields to the people who are on the border. I think we could do that without attracting any attention. * * * I would have been very glad to put in the bill the Great Lakes area, but I could not put it in the bill because of the Canadian situation. You will notice No. 7 in my bill is camouflaged. It is called "intermediate" stations for transcontinental flights, but it means the same thing.

In other words, here was a proposal to establish what was to be, for all essential purposes, a military air base, but camouflaged so that its real purpose would be obscured.

Think for a moment the consequences to which such testimony as this might lead if we had a volatile, excitable nation at the north. The natural reaction would be:

So you propose to establish a camouflaged air base on the Canadian border. Well, we will go you one better and we will actually establish one, and it will not be camouflaged, either. If you establish two we will establish four and if you establish a dozen we will establish two dozen.

Thus the heartbreaking, soul-crushing race of armaments would be on and what at first would appear to be a small apple of discord might grow and grow, until it would forever banish peace and understanding. Mind you, I do not expect any such result in this instance because I rely on British sanity and charity to overlook the incident, especially after the timely and emphatic repudiation by our President, but I think the President's hands should be upheld by the effective measure of legislation I have proposed so that America may rest assured that such things shall never occur again.

One hundred and eighteen years ago on the 29th day of last month the Rush-Bagot agreement for the delimitation of armaments on the Canadian border was signed in the city of Washington on the site of what was then the British Legation, only a short distance from where we now are. This agreement began a friendly association between the United States and Canada that has existed uninterrupted for 118 years, bringing with it the inestimable blessings of amity and peace. The friendship welded by this indissoluble bond has been so strong that by mutual consent the old forts were long since allowed to lapse into decay and the old cannon to accumulate rust, and all doubt and distrust was banished from the minds of those dwelling on the North American Continent by this splendid Anglo-American concord.

Away back in 1816, John Quincy Adams, then United States Minister to London, struck the dominant note of this happy entente when he wrote to Viscount Castlereagh, who was in charge of the British negotiations:

It is the sincere wish and, so far as depends upon them, the determined intention of the American Government, that the peace so happily restored between the two countries should be cemented by every suitable measure of conciliation and by that mutual reliance upon good faith far better adapted to the maintenance of national harmony than the jealous and exasperating defiance of complete armor. The increase of naval armaments on one side upon the Lakes, during peace, will necessitate the like increase on the other, and besides causing an aggravation of useless expense to both parties must operate as a continual stimulus of suspicion and of ill will upon the inhabitants and local authorities of the borders against those of their neighbors. The moral and political tendency of such a system must be to war, and not to peace.

In view of the matchless harmony that has enabled two Nations with 3,000 miles of common border to dwell side by side in perfect peace for 118 years, there is something tragically pathetic in the testimony given before Chairman MCSWAIN'S committee by the two general officers. In God's name let us not do anything to disturb this arrangement which means so much to the peace and happiness of the English-speaking people. Let the forts continue to decay and the cannon to rust. In that direction and not in the direction of camouflaged air bases lies the road to security and happiness.

There may be some doubt as to whether the President, in time of peace, has the authority to compel Army officers to

submit their statements on international affairs to him for his approval before they are given publicity. Let us pass this bill so that he undeniably may have that authority. Let us pass it to sponge completely out of existence the evil effects of the testimony about camouflaged air bases, and as a reaffirmation of the complete and unsuspecting trust and confidence which the people of the United States and the people of Canada have each for the other.

It seems to me there is one lesson the jingoists and the military enthusiasts never learn, and that is that there is more strength for the cause of peace in the divine command "Thou shalt love thy neighbor as thyself" than there is in all the cannon and fortifications and air bases with which a nation may surround itself. The ordinances that fell from the Throne of God at Mount Sinai are still the rules of conduct that should govern human relations. I am one of those who believe that the low estate into which we have fallen, with suffering and misery indescribable, is due in part, at least, to the fact that we have lost contact with the spiritual values. There is, if we could only find it, a moral strength that makes armaments look petty and insecure. With rare spiritual insight Longfellow described it when he wrote:

> Were half the power that fills the world with terror,
> Were half the wealth bestowed on camps and courts,
> Given to redeem the human mind from error,
> There were no need of arsenals or forts.

COMMITTEE ON RULES

Mr. O'CONNOR. Mr. Speaker, I ask unanimous consent that the Rules Committee may have until midnight tonight to file a report.

The SPEAKER. Without objection it is so ordered.

There was no objection.

INTERPARLIAMENTARY UNION

Mr. McREYNOLDS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 2276) to authorize participation by the United States in the Interparliamentary Union, insist on the House amendment, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. McREYNOLDS, BLOOM, and FISH.

LEAVE OF ABSENCE

Mr. BUCKBEE. Mr. Speaker, I ask unanimous consent that because of illness my colleague the gentleman from Illinois [Mr. DIRKSEN] may have an indefinite leave of absence.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. EKWALL. Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

The SPEAKER. There is a special order pending. The Chair asks the gentleman to withhold his request until the special order is carried out.

Mr. EKWALL. Mr. Speaker, I withhold my request.

THE SUPREME COURT

The SPEAKER. Under the special order previously entered by the House, the gentleman from Montana [Mr. MONAGHAN] is recognized for 13 minutes.

Mr. MONAGHAN. Mr. Speaker, at the outset, permit me to tell a very amusing story regarding my very dear friend the late Senator Thomas J. Walsh, of Montana, who was such a fearless and outstanding champion and advocate of the people's rights. It was on an occasion when Senator Walsh was trying a case in Helena, Mont. Senator Walsh, in his scholarly manner, had gone to much trouble to look up the authorities in the case and brought the books to counsel's table. Opposing counsel in the case happened to be a man of less scholarly attitude and had given less time to the consideration of the case. He went to the janitor of the courthouse and tipped him to move a 3- or 4-foot shelf of law books to his side of the table. When time for argument came, Senator Walsh made a very scholarly presentation of his side of the case, consuming about 2 hours. Opposing counsel, in arguing his side of the case, said: "In the presentation of my side of this case I shall not take so much of the time of the court as did my distinguished and learned opponent." Reading a citation from one of the cases, he said, with a sweep of the arm indicating the long row of books before him: "All these cases bear me out." It is amusing to note that Senator Walsh was defeated in that particular case.

Permit me to say that I have gone to the trouble and taken the time of looking up authorities. I have not bluffed the Congress, by any means, and I hope I may be afforded sufficient time to give the Congress the advantage of the research I have done on this very vital question: Whether or not 9 men in these United States shall be permitted to negative the voice of the people, the Congress of the United States. Were I to propose today that 9 men in this Congress, or selected from both the Senate and the House, be given the power to nullify an act of this Congress, signed by the Speaker, the Vice President, and the President of the United States, I would be considered and regarded, and rightly so, as mad. Yet the Congress of the United States, back in the time of John Marshall, silently acquiesced to just such a proposal when John Marshall, in the case of *Madison* v. *Marbury* (1 Cr. 137), decided that an act of the Congress, under the authority of the Constitution, providing that the Supreme Court should have the power to issue a writ of mandamus, was unconstitutional, that the Congress had no such power.

Before pursuing this matter further by a citation from Elliott's Debates on the Federal Constitution, quoting John Marshall's language, I shall read to you the provisions of the Constitution on this point.

> In all cases affecting Ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

John Marshall himself said:

> What is the meaning of the term "exception"? Does it not mean an alteration and diminution? The Congress is empowered to make exceptions to appellate jurisdiction, as to law and fact, of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people.

That aristocratic reactionary even used the words:

> In the interest and liberty of the people of the United States.

Yet in the case of *Fletcher* v. *Peck* (6 Cr. 87), where the Georgia Legislature without due and adequate consideration sold to four land companies 40,000,000 acres of land in Georgia, and the people, outraged and incensed, drove the legislature from public office and elected a new legislature in its place, which legislature passed a statute repealing the contract that had been given for no consideration to the four land companies, John Marshall said that the legislalature of that State, and the people of that State indirectly, therefore, had no power to nullify that act of the Georgia Legislature, a corrupt legislative body, which gave the 40,000,000 acres of land to the four land companies, and stated it was unconstitutional and impaired the obligation of contract extended in the Constitution.

Fortunately, since then a common law has grown up where fraud vitiates a contract ab initio, but in that case, as in the other cases, John Marshall usurped a power which rightly belonged to the people of this Nation through their duly elected and selected representatives.

I read from the Washington Post of today, May 27, first column, left-hand corner:

> Friends and foes of the N. R. A. were hoping alike that the Court would decide to act today. If it does not, there will be a week of argument in Congress, argument that may prove to be a sham battle. Whatever Congress does this week may be changed completely by the ruling if it comes next Monday. If it comes today congressional leaders would have an opportunity to rewrite legislation to conform. House debate on the N. R. A., always providing the program is not upset by a Supreme Court ruling, will be held Tuesday. With the cooperation of Speaker BYRNS and other Democratic leaders this debate will be pushed to a conclusion immediately. It has been restricted to 4 hours. There

appears to be little doubt that the House will pass the measure reported by the committee. This measure is expected to be one substantially approved by President Roosevelt.

And so forth. Yet the Supreme Court of the United States, a Court composed of men with no greater learning, with no greater knowledge of the law, with no greater sense of integrity, and with no responsiveness to the people of this Nation, can declare that act today unconstitutional and the people have no recourse.

In a very brilliant speech, which was directed to my attention through the brilliant memory of Ed Cannon, one of my constituents from Anaconda, Mont., who through John Kerrigan of the same city conveyed to me the information regarding its delivery, Senator Owen very learnedly pointed out that the Congress of the United States should have impeached John Marshall for his action in the Marbury against Madison case. However, he rightly points to the case and states that the Congress no doubt at that time did not want to act arbitrarily and destroy the good name of that man whom they thought was acting under a mistaken notion of the Constitution.

Read through the Constitution of the United States. You will find page upon page dedicated to the rights which Congress shall enjoy. The first article of the Constitution gives power to Congress. The power of the Executive is circumscribed only by the Congress, and the power of the Supreme Court is limited by specific language by the Congress. As I have before quoted, the powers of Congress are sweeping and all-inclusive. Those that are not granted to the Congress are reserved to the people and to the States, respectively. The reason for the American Revolution was taxation without representation. Can you conceive of a greater perversion of the principle of liberty which the fathers intended to preserve and promote than nine men, not representing the people, not selected by them, not responsible to them for whatever mistakes they make, with greater power than a king of old? The Congress of the United States was intended as the sovereign, the supreme governing power of our land; and yet the article which I have read from the Washington Post this morning forcibly brings home to us the fact that we, the sovereign representatives of the people of the United States, elected to declare their will, which they may reject by defeating us at the next election, must await upon the decision of nine men, whose tyrannical power is no greater nor no less than that of a king in his mighty castle of old. To those who are worried and have been worried about the fact that taking any of this power away from the Supreme Court as in the resolution which I have submitted to the Congress, which provides:

That from and after the passage of this act Federal judges are forbidden to declare any act of Congress unconstitutional.

No appeal shall be permitted in any case in which the constitutionality of act of Congress is challenged, the passage by Congress of any act being deemed conclusive presumption of the constitutionality of such act.

Any Federal judge who declares any act passed by the Congress of the United States to be unconstitutional is hereby declared to be guilty of violating the constitutional requirement of good behavior upon which his tenure of office rests and shall be held by such decision ipso facto to have vacated his office.

SEC. 2. That the President of the United States is hereby authorized to nominate a successor to fill the position vacated by such judicial officer.

To those who fear that this might destroy liberty, let me say they lack knowledge of the liberties that have been destroyed in such cases as the minimum wage law of the District of Columbia, where a law to protect women from being worked excessive hours was declared unconstitutional; the case of Lochner against New York, where an act of the Legislature of the State of New York was declared unconstitutional which forbade bakers from being employed more than 10 hours a day. Child labor laws and other similar cases have proven that economic liberty has been destroyed. The Hitchman Coal & Coke Co. against Mitchell and others, Coppage against Kansas, the American Tobacco case, the Standard Oil Co. case, the Bank of the United States case, and the Income Tax case all prove conclusively that the Supreme Court has done more to destroy our liberty than has any other single agency.

Jefferson said in substance: Like a thief in the night it has been constantly, consistently encroaching upon the liberties of our country, until eventually there may grow up a judicial oligarchy in our land.

In the Majority Rule and the Judiciary, by William L. Ransom, in the preface Ransom says:

The people have been most reluctant to admit that either their constitutions or any instrumentality of government created by their constitutions should bar them permanently from any pathway of progress and justice which is pointed out by the experience and called for by the conscience of this and other civilized nations.

And on page 4 of the introduction by Theodore Roosevelt, in the same book, he says:

From this standpoint judges and lawyers are merely instruments for securing the right solution of certain questions in which all good citizens are equally concerned. How completely the self-styled Republican leaders of today have wandered from the principles of Abraham Lincoln is shown by their refusal to apply to this question the principles which Lincoln laid down in discussing the Dred Scott case. He scornfully refused to treat the decision of the Supreme Court in that case as permanently binding on the people, or as a matter only for judges and lawyers; and he explicitly laid down the doctrine that the people were the masters of the courts, and that it was for the people and not for the courts to determine the principles and policies in accordance with which our Constitution was to be interpreted and our Government administered.

We find in The Judicial Veto, reported by Horace A. Davis the following on page 2:

How did the courts get the right to declare a law unconstitutional and void? No such power is in terms granted by the Federal Constitution itself, or by the State constitutions; nor is there any logical necessity why the opinion of the judiciary, one of the three branches of the Government, should override the action of another, the legislature, and bind a third, the executive (as well as the whole people), for all time. Nor has such a result always been acquiesced in. Declarations by colonial courts that laws were unconstitutional led to riots in New York and Rhode Island; and when the United States Supreme Court in 1832 declared a statute of Georgia to be unconstitutional, because it contravened a treaty of the United States with the Cherokee Indians, Andrew Jackson remarked, "John Marshall has made his decision; now let him enforce it"; and declined to interfere with the State's actions."

In the Standard Oil Co. case referred to previously, the Court held:

The combination of the defendants in this case is an unreasonable and undue restraint of trade in petroleum and its products moving in interstate commerce, and falls within the prohibitions of the act as so construed.

The Senate committee reporting upon this used the following language (Senate Journal, July 1832, pp. 438–439):

The Antitrust Act makes it a criminal offense to violate the law, and provides a punishment applied by fine and imprisonment. To inject into the act the question of whether an agreement or combination is reasonable or unreasonable would render the act, as a criminal or penal statute, indefinite and uncertain, and hence to that extent utterly nugatory and void, and would practically amount to a repeal of that part of the act * * *. And while the same technical objections do not apply to civil prosecutions, the injection of the rule of reasonableness or unreasonableness would lead to the greatest variableness and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case, and there would be as many different rules of reasonableness as cases, courts, and juries * * *. To amend the Antitrust Act, as suggested by this bill, would be to entirely emasculate it, and for all practical purposes render it nugatory as a remedial statute.

About the income-tax case above referred to, permit me to quote that outstanding champion of the people who so illustriously served the people of the United States in the Senate. Senator Robert L. Owen, who in a masterful speech delivered at the auditorium in Oklahoma City, Okla., January 27, 1917, said:

Just look at this income-tax case and look at the dogma of the Supreme Court on the question of deciding an act unconstitutional only when the unconstitutionality is overwhelmingly established, and only when there is no doubt about the unconstitutionality of the act. The professional dogma of the Court is to give all benefits of the doubt in favor of the constitutionality. The trouble about the dogma is they never pay any vital attention to it. It is only a theoretical dogma; it is not real; I will show you why. Here is the income-tax case. For a hundred years the Supreme Court had sustained the right of Congress to pass an income-tax law. Here was the income-tax law, passed by the House of Representatives, they said it was constitutional; passed by the Senate, they said it

was constitutional; approved by the President of the United States, he said it was constitutional. Here are the decisions of the Supreme Court of the United States for a hundred years, and they said it was constitutional; and here were five Judges on the bench, on the first vote they said it was constitutional, and then Judge Blank reversed himself overnight and joined the other four, which made them five, and then they decided in spite of this dogma that there was no doubt whatever about its unconstitutionality. Now, that is quite a remarkable thing. Here is Judge Blank in that case who, when he first voted it was constitutional, judicially ascertained the fallibility of the other four minority members of the Court; and then when he changed his mind and joined the four minority members and made them five, he judicially ascertained the fallibility of the four he had just left, and since he was on both sides he must have been fallible. And there was a demonstration of the fallibility of every Judge on the Court by the action of Judge Blank.

And he further says regarding the Standard Oil and American Tobacco cases:

Look at this great case known as the "Standard Oil case." Here was a case where the people of this country, after years of struggling, finally had their Representatives in Congress, in the Senate and in the House, both agree upon the Sherman antitrust law (1890), making it a criminal offense to commit an act in restraint of trade, vital if the principle of competition is to survive, vital if the monopolies are not to be permitted to kill off every competitor and have a masterful control over the market and over the price which shall be paid for that which you produce and for that which you are compelled to buy. That law it took you years to get on the statute book. It finally, by the slow, dragging, wearisome process of the court, came before the Supreme Court in the Trans-Missouri and Joint Traffic cases, and there, in three different decisions, that Court declared that Congress meant what it said and that it was the law, that any act in restraint of trade was criminal.

Senator Robert M. La Follette, that man whose name will always be associated with justice, who ran for the Presidency of the United States on a program of social justice and the broad principles of progress, with that other fearless champion of the people, Senator BURTON K. WHEELER, of Montana, had the following to say in his introduction to that splendid book by Roe entitled "Our Judicial Oligarchy", introduction, page 6:

In a self-governing nation, neither courts nor their decisions can properly remain above and beyond the control of the sovereign citizens. Judges cannot perform their high function in the public interest unless they are made acquainted with public needs and are responsive to the public will. * * * Evidence abounds that, as constituted today, the courts pervert justice almost as often as they administer it. Precedent and procedure have combined to make one law for the rich and another for the poor.

It is further worthy of note that no nation in the world but the United States—the United States, the land of liberty, of equality—permits the few to nullify and negative an act of the Parliament or of the Congress. England forbids it, France and Denmark forbid it. Italy by written law forbids it. Likewise by written statute Austria, Australia, Germany, Belgium, and New Zealand forbid it.

What has the Supreme Court of the United States done to the due-process clause of the Constitution? The due-process clause was designed to prevent the taking of life, liberty, and property without due process of law—without court action or proper procedure. The Supreme Court of the United States has twisted this very phrase in the opposite direction and has made it more the right of the few to crush the many under their iron heels, and the Constitution of the United States does not allow it, yet we passively sit back and permit it.

Mr. Speaker, I would far rather place the people's welfare in the hands of 9 Members of this Congress or 9 Members of the Senate, responsive to the people of America, and elected by them, who can be changed if they do not voice the sentiment of the people of America, than to place it in the hands of 9 autocratic rulers, selected for life, like the kings of old, and give them the power to nullify the people's will. Going back into history, we find citation after citation of cases where the Supreme Court should not have had this power and where the Presidents of the United States have decried their usurpation of the same.

Going back to Elliott's debates again on the Federal Constitution, we find where a man by the name of Wilson three times presented an amendment to the resolution considered by Gerry. Mr. Gerry's amendment was to give the President the power to veto the acts of Congress. The amendment of Wilson was as follows:

It was moved by Mr. Wilson, and seconded by Mr. Madison, that the following amendment be made to the last resolution—after the words "National Executive", to add the words "a convenient number of the national judiciary."

This was merely a mild form of veto. Yet the statement is made:

It was then moved and seconded to proceed to the consideration of the ninth resolution, when on motion to agree to the first clause, it passed in the affirmative.

This language occurs on pages 160, 164, 214, and 243 of volume 1 of Elliott's Debates on the Federal Constitution. This mild form of judicial veto by the fathers of the Constitution was defeated in the Constitutional Convention and was only acquiesced in by the passivity of Congress.

Mr. Speaker, permit me to quote for you some statements of very illustrious men. Andrew Jackson sent a message to the Congress of the United States in which he said, referring to the case of the banks of the United States:

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court.

He further said:

The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

[Here the gavel fell.]

Mr. MONAGHAN. Mr. Speaker, I ask unanimous consent to proceed for 5 additional minutes.

Mrs. NORTON. Mr. Speaker, reserving the right to object, this is District day. We have 14 bills on the calendar which are very important to the District.

I regret to say that I shall have to refuse to yield any further time. I shall not object to the 5 minutes requested by the gentleman, but I shall refuse to yield any further time to anyone.

The SPEAKER. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. MONAGHAN. This is a very brilliant statement and measures up so well and is so similar to the statement of President Roosevelt on inauguration day that I am going to read it in toto. In concluding, Andrew Jackson said:

If we cannot at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can, at least, take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in our code of laws and system of political economy.

I have now done my duty to my country. If sustained by my fellow citizens, I shall be grateful and happy; if not, I shall find, in the motives which impel me, ample grounds for contentment and peace. In the difficulties which surround us, and the dangers which threaten our institutions, there is cause for neither dismay nor alarm. For relief and deliverance let us firmly rely on that kind Providence which, I am sure, watches with peculiar care over the destinies of our Republic, and on the intelligence and wisdom of our countrymen. Through His abundant goodness, and their patriotic devotion, our liberty and Union will be preserved.

Note the language used by Andrew Jackson—"Old Hickory"—a man after my own heart, one who is not afraid to say that nine men are not infallible, and especially after the chosen representatives of the people and their President declared their faith in the constitutionality of a measure. Note carefully his language. In other words, the will of the people of America will always preserve intact if allowed to function the Constitution of the United States.

Mr. DRISCOLL. Mr. Speaker, will the gentleman yield?

Mr. MONAGHAN. I yield.

Mr. DRISCOLL. What does the gentleman think of this proposition? The Constitution of the United States forbids the enactment by Congress of an ex post facto law. Such a law was passed by the Congress of the United States in 1862, and again in 1865. For the violation of this law, Agustus H. Garland, of Arkansas, was refused the right to practice his profession, and on appeal to the United States

Supreme Court by Mr. Garland, the Supreme Court of the United States, by a 5-to-4 decision, and the first 5-to-4 decision in the history of the United States, declared the law unconstitutional. What would the gentleman do or how would he remedy the enactment of an ex post facto law and the punishment of a citizen of the United States under an ex post facto law if the power were not exercised by the Supreme Court of the United States?

Mr. MONAGHAN. In answer to my distinguished colleague from Pennsylvania [Mr. DRISCOLL] I may say that in the Garland case the unconstitutionality resulted from the administration of the act and not from a lack of judgment or a lack of faith in the Constitution by the Congress of the United States. I have sufficient confidence in the Congress of the United States that it will uphold its Constitution; that our magnanimous Speaker, Mr. BYRNS, an outstanding leader of this administration in Congress, will live up to his constitutional duties; and that the President of the United States, who loves the Constitution dearly and guards it well, will also defend and support it, more so, perhaps, than nine lifetime members of a Court who declare an act of Congress protecting children against child labor, men and women against minimum wages, providing that men cannot be thrown out on the scrap heap after business concerns in the railroad business get throught with them, or in other business. I say that action of a Supreme Court in this respect is actually stamping the Congress as being derelict in its duty to support, defend, maintain, and preserve that great document of liberty. [Applause.]

[Here the gavel fell.]

Mr. BLANTON. Mr. Speaker, I ask unanimous consent that the gentleman from Montana may have the privilege of putting in his speech the citations he has looked up. While I do not agree with the gentleman in the argument he is making, I realize that he has spent a lot of time looking up various citations, and I think the gentleman should have the privilege of putting them in his speech.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

AMENDMENT OF THE WHEELER-HOWARD ACT

Mr. ROGERS of Oklahoma. Mr. Speaker, I first wish to thank the gentlewoman from New Jersey, the Chairman of the District of Columbia Committee, for yielding to me at this time.

Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 7781) to define the election procedure under the act of June 18, 1934, and for other purposes.

I may say for the benefit of the Members who are not familiar with this bill that its purpose is to amend the Wheeler-Howard Indian Act. There is no new legislation in it whatever. It is very important that this bill be passed immediately because, unless it is passed soon, the Department will have to hold 120 elections before June 18 of this year. For this reason I ask unanimous consent for the consideration of the bill at this time.

The Clerk read the title of the bill.

Mr. WOLCOTT. Mr. Speaker, reserving the right to object, may I ask the gentleman what is embraced in the bill?

Mr. ROGERS of Oklahoma. It is an amendment to the Wheeler-Howard Reorganization Act that was passed during the Seventy-third Congress.

Mr. WOLCOTT. To what does that apply?

Mr. ROGERS of Oklahoma. This bill applies to the holding of elections under the Wheeler-Howard Act, which requires that a majority of the adult Indians of a tribe must vote against the Wheeler-Howard Act or the provisions of the act will be imposed upon them. This was not the intent of Congress or the Department or the Indian Commissioner, but the law has been so interpreted. This bill corrects that default and provides that a majority of the Indians voting in an election shall be all that is necessary to determine the matter.

Mr. WOLCOTT. With the gentleman's explanation, I withdraw my objection.

Mr. ROGERS of Oklahoma. The bill was reported unanimously by the committee.

Mr. NICHOLS. Mr. Speaker, reserving the right to object—and I shall not object if I understand the bill correctly—I would like to ask the Chairman of the Committee on Indian Affairs if there is anything in this bill which will bring the Indians of Oklahoma under the provisions of the Wheeler-Howard Act where such provisions are not now imposed on them?

Mr. ROGERS of Oklahoma. Absolutely nothing, Mr. Speaker.

Mr. NICHOLS. Then I shall not object.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. BURDICK. Mr. Speaker, reserving the right to object, is it not a fact today that if the Indian roll shows 800 Indians enrolled and 380 of them vote not to go under the act and 2 vote for it, the 2 so voting win the election?

Mr. ROGERS of Oklahoma. The gentleman is right.

Mr. BURDICK. And this amendment clarifies that situation?

Mr. ROGERS of Oklahoma. Clarifies the law and makes it necessary to have a majority of those voting in order to have the law imposed upon them.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That in any election heretofore or hereafter held under the act of June 18, 1934 (48 Stat. 984), on the question of excluding a reservation from the application of the said act or on the question of adopting a constitution and bylaws or amendments thereto or on the question of ratifying a charter, the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such exclusion, adoption, or ratification, as the case may be: *Provided, however*, That in each instance the total vote cast shall not be less than 30 percent of those entitled to vote.

SEC. 2. The time for holding elections on the question of excluding a reservation from the application of said act of June 18, 1934, is hereby extended to June 18, 1936.

SEC. 3. If the period of trust or of restriction on any Indian land has not, before the passage of this act, been extended to a date subsequent to December 31, 1936, and if the reservation containing such lands has voted or shall vote to exclude itself from the application of the act of June 18, 1934, the periods of trust or the restrictions on alienation of such lands are hereby extended to December 31, 1936.

SEC. 4. All laws, general and special, and all treaty provisions affecting any Indian reservation which has voted or may vote to exclude itself from the application of the act of June 18, 1934 (48 Stat. 984), shall be deemed to have been continuously effective as to such reservations, notwithstanding the passage of said act of June 18, 1934.

With the following committee amendment:

Page 2, line 19, after the figures "1934" insert "Nothing in the act of June 18, 1934, shall be construed to abrogate or impair any rights guaranteed under any existing treaty with any Indian tribe, where such tribe voted not to exclude itself from the application of said act."

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

THE BATTLESHIP "OREGON"

Mr. EKWALL. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection?

There was no objection.

Mr. EKWALL. Mr. Speaker, this is the thirty-seventh anniversary of the completion of the greatest naval cruise in modern history. Thirty-seven years ago yesterday morning the bulldog of the American Navy, the battleship *Oregon*, dropped anchor at Key West, Fla., after a cruise of 14,000 miles from San Francisco Bay, to participate in the Battle of Santiago during the Spanish-American War.

I am introducing a bill to appropriate enough money to provide a permanent berth for the battleship *Oregon* in the harbor of my home city, Portland, Oreg., as a patriotic shrine for all time to come.

The battleship *Oregon* has one of the most glorious records of any ship in our Navy.

I ask unanimous consent to extend my remarks and include therein a poem dedicated to the battleship *Oregon* by Ruth Coffey Hillis, Forest Grove, Oreg.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. EKWALL. Mr. Speaker, on this anniversary of the completion of the most famous and daring cruise of modern naval history, I ask the indulgence of my colleagues while I briefly recall to memory this marvelous feat. I refer to the cruise in 1898 of the U. S. S. *Oregon,* bulldog of the United States Navy, named in honor of my adopted State. This battleship, which was destined to fill some of the most glorious pages of our modern naval history, was built by the Union Iron Works at San Francisco, Calif., at a cost of $3,180,000. The keel was laid November 19, 1891, and she was launched October 26, 1893. The sponsor at her launching was Miss Daisy Ainsworth, daughter of Capt. J. C. Ainsworth, president of the Oregon Steam Navigation Co., and a pioneer of river navigation in Oregon and Washington and in the development of the entire Northwest. Miss Eugenia Shelby pressed the button which released the vessel and started her down the ways.

You will remember that on February 15, 1898, the U. S. S. *Maine* was blown up in Habana harbor, and the diplomatic relations with Spain were considerably strained from that time until the actual declaration of war between the two nations on April 20, 1898.

On March 17, 1898, Capt. Charles Edgar Clark assumed command of the *Oregon* at San Francisco, Calif., and she sailed under sealed orders on March 19, 1898, for Callao, Peru, on the first lap of her famous cruise. After coaling at Callao, with all possible haste for 50 hours, the *Oregon* proceeded at top speed, through unusually rough seas, some 2,600 miles to the Straits of Magellan. There she expected to encounter the Spanish torpedo boat *Temerario,* which was reported to have proceeded from Montevideo to intercept the *Oregon* in the Straits. With all lights screened, the *Oregon,* averaging 15½ knots per hour for 11 hours, plowed through terrific storms until the straits were cleared, and she entered the Atlantic.

On April 30, the *Oregon* steamed into Rio de Janeiro, and there learned that since she was last in contact with the Navy Department, war had been declared with Spain. While refueling in that port on May 2 came the news of Dewey's thrilling victory at Manila Bay. On May 4 the *Oregon* steamed out of the harbor of Rio in the face of rumors that the Spanish fleet from Cape de Verde Islands, under command of Admiral Cervera, was awaiting to destroy her, in the immediate vicinity. On May 8 she anchored in the harbor of Bahia for a day's wait, and for further orders from home. During the night of May 9 she again sailed to sea, standing well off the coast, in order to make a wide sweep around Cape St. Roque, where Admiral Cervera's fleet was again reported to be awaiting her. In the event of meeting the Spanish fleet, Captain Clark's plan was to go ahead at full speed, under forced draft, and head away from the enemy. The purpose of this maneuver was to string out the enemy's vessels in their chase. When their leading vessel should approach within necessary range, the *Oregon* was to turn on her and attempt to destroy her, and then devote her attention to the others in succession.

Only two of the Spanish warships were rated to be as speedy as the *Oregon,* and by making a running fight, it was expected to eliminate the possibility of being surrounded or rammed or torpedoed. How well this plan would have succeeded is clearly shown by the *Oregon's* work on July 3, for on that historic day this very maneuver was, by chance, executed, with the difference that the *Oregon* chased and overtook, in turn, each of the enemy vessels instead of their chasing the *Oregon.* On the evening of May 12, when off Cape St. Roque, a number of lights, which had the appearance of a fleet sailing in double column, was sighted—the *Oregon* without a light burning, passed through the midst of the vessels undetected, with every man of the crew at his post ready for instant action. On May 15 the *Oregon* made her best run of 375 miles, and on the 18th, anchored at the harbor of Bridgetown, Barbados. There the rumor reached Captain Clark that a Spanish fleet of 16 vessels was at Martinique, 90 miles away, and once again the *Oregon* set forth for Key West. She passed to the north of the Bahamas, and after dark on May 24 anchored off Jupiter Inlet, Fla., where news of her safe arrival was flashed to the Navy Department at Washington. This information sent a thrill of joy and pride throughout the Nation, and the relatives of the 550 officers and men breathed sighs of relief from the anxiety which they had experienced through this epoch-making voyage. On orders to proceed to Key West, anchors were once more hauled, and on the morning of May 26, just 37 years ago yesterday morning, this gallant ship, the pride of our Navy, reached her destination and anchored off Sand Key, having made the run of 14,000 miles in 68 days' actual time, but in 53 days steaming time. She had passed through two oceans, circumnavigated a continent; had endured oppressive heat and incessant toil, and demonstrated to the European skeptics that heavy battleships of its class could cruise with safety in all conditions of wind and sea, and what was more remarkable, report at the end of such a tremendously long journey in first-class fighting condition, ready at a moment's notice, with decks cleared, to meet the enemy ships.

She immediately joined Admiral Sampson's fleet, and on June 1 took her position in the line in front of Santiago Bay. After waiting a little more than a month for the Spanish fleet to steam forth, on July 3, 1898, the hoped-for event took place. Here let me quote Lt. Edward W. Eberle, who commanded the forward turret of the *Oregon* during the ensuing battle:

> No artist could do justice to that fascinating and awe-inspiring scene, when, led by the *Maria Teresa,* the Spanish fleet majestically swept out of the narrow harbor. Their large red-and-yellow ensigns stood out brilliantly against the dark-green background of the Morro and Socapa headlands, and their massive black hulls, with great white waves piled under their bows, seemed veritable things of life. At the call to general quarters, the *Oregon* charged ahead at full speed under forced draft, and the fleet headed in to meet the enemy. The *Teresa* was just abreast the Morro as we opened fire with an 8-inch gun, to which she and the forts replied with a shower of shell. She turned sharply to the westward, and was followed by the *Vizcaya, Colon,* and *Oquendo,* in the order named. As soon as they cleared the harbor their speed was increased and their fire became furious. Our ships opened a heavy fire, and then the *Oregon* turned more to the westward, in order to head off the rapidly moving column.
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> For some minutes Captain Clark stood on the bridge, giving orders, and studying the situation; and the thought that was then uppermost in his mind is clearly expressed in the words of his official report to Admiral Sampson: "As soon as it was evident that the enemy's ships were trying to break through and escape to the westward, we went ahead full speed, with the determination of carrying out to the utmost your order, 'If the enemy tries to escape, the ships must close and engage as soon as possible, and endeavor to sink his vessels or force them to run ashore.'" The Spaniards passed rapidly to the westward, and the firing being at long range, we sent our 6-pounder crews behind the turrets for protection. Our turret crews soon settled down to steady and deliberate work, and as the ship's increasing speed enabled us to close in on the enemy, our gunfire became very effective. The engineer force was doing magnificent work, and the *Oregon* was fairly jumping out of the water; and at 10 minutes to 10 she dashed between the *Iowa* and the *Texas,* passing within 100 yards of the *Iowa,* and continued her destructive gunfire. This wonderful burst of speed, which enabled the *Oregon* to pass all the ships except the *Brooklyn,* excited the astonishment and admiration of the officers of the *Iowa.* One of them described it thus: "The *Oregon* came racing across the *Iowa's* bows, and charged right down on the Spanish fleet, letting go first at one vessel, then at the other, and all the time carrying a great white bone in her teeth, that told of her engine power and wonderful speed." By this time Admiral Cervera's ships were in a well-defined column, steaming parallel with the coastline, at high speed. The gunfire of both fleets was rapid and furious, but most of the enemy's shells passed over us.
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> As we swept past the *Iowa* Captain Clark was standing in his favorite place on top of the forward 13-inch turret, when word came to him that the torpedo boats were coming out. The 6-pounder crews were immediately ordered to their guns, and in less time than it takes to write it they were peppering away at the two destroyers. As the leading vessel, the *Pluton,* came out, she appeared to hesitate for a moment, and then turned to the westward and followed in the wake of the others. Our after guns were also turned upon the torpedo boats, and the fire of these guns, together with the fire of all the ships astern of us, simply overwhelmed them. There was a perfect hail of pro-

jectiles and the water about the boats was whipped into a mass of foam, but the plucky little vessels fought their guns until a shell (which, it is claimed, was fired by our after 6-inch gun) struck the *Furor* amidships and caused an explosion. This torpedo boat was literally torn to pieces and in her death agony circled round and round before disappearing beneath the waves. Her rudder had been jammed hard over, and with the last steam in her boilers her propellers continued to turn, mangling those who had life enough left to jump overboard. With her consort destroyed, and herself a battered wreck, the *Pluton* crept inshore and sank in shoal water, about 4 miles west of Morro Castle. Just 12 minutes of gunfire had accomplished their destruction.

While our after guns were firing on the torpedo boats our forward guns were hammering away at the third and fourth armored vessels, which were now on our starboard bow, in a broken column. The *Brooklyn* was on our port bow engaging the two leading ships. The *Teresa* was farther off shore than the other three vessels and was being passed by them. We brought her sharp on our starboard bow, and, as we gained on her, our forward guns engaged her at 2,000 yards' range when (about 10 minutes after 10) we discovered her to be on fire. The *Teresa* was soon left behind by the other vessels. Smoke and flames were pouring from her upper works, and the sight of her hopeless condition served to double the energy of our ships, for their fire became more rapid and deadly than ever. The *Oregon*, *Texas*, and *Iowa* hurled their terrific broadsides into her as she turned inshore and steamed slowly for the beach at Juan Gonzales, 6 miles from Santiago. Only 40 minutes had elapsed since the stately *Teresa* had led the column out of the harbor. She boldly went to her death, fighting her guns until overwhelmed by fire and shell.

The *Oregon* now charged on after the *Oquendo* and opened on her with the forward guns and also with all the guns of the starboard battery as soon as they could be brought to bear. For a while the enemy's vessels appeared badly bunched. The *Colon* was just passing inshore of the *Vizcaya*, and the *Oquendo* was in a direct line between us and those two ships. We closed rapidly on the *Oquendo* and, at a range of 900 yards, poured into her the hottest and most destructive fire of that eventful day. Each gun captain fought his guns as if victory depended upon him alone, and within 12 minutes after the *Teresa* had given up the fight the *Oquendo* was burning fiercely. She, too, turned inshore, with port helm heading slightly to the eastward; and as we drew her abeam, our guns raked her unmercifully. The *Oquendo* made the pluckiest fight and suffered the most severe punishment, as is attested by her torn and battered hull, which rested upon the beach half a mile west of the *Teresa*. When flames burst from the *Oquendo*, and she turned inshore, Captain Clark, who was standing on top of the forward 13-inch turret, called out to me, "We have settled another; look out for the rest." This was answered by a mighty cheer, which was repeated through the ammunition passages and magazines and down among the heroes of the boiler and engine rooms.

With bulldog determination, the *Oregon* continued on in her mad race after the *Vizcaya*, now 2 miles away, and opened with the forward guns. The *Brooklyn*, still on our port bow, was apparently about 2 miles off the *Vizcaya's* port beam, and all three vessels were firing furiously. The *Colon*, now far ahead and close inshore, was increasing her lead. The *Brooklyn* signaled to the fleet, "Close up", and we repeated the signal to the ships astern, but the clouds of smoke and the long distance prevented their seeing it. In fact, the only vessels that we could distinguish astern were the *Texas*, on our starboard quarter, and the *Vixen*, on our port quarter. Our speed steadily increased, and when we were about 3,000 yards from the *Vizcaya*, that vessel swung off shore and headed across our bow, firing her forward guns at the *Brooklyn* and her port ones at us. By this maneuver the *Vizcaya* exposed her broadside to us, and a big shell from one of our turret guns seemed to strike her in the port bow, when she immediately resumed her former course.

A few minutes later, at about a quarter to 11, the man in the fighting top reported that a 13-inch shell had struck her amidships, heeling her to starboard, and sending up a volume of steam and smoke. Cheer after cheer rang through the ship, and our gunfire increased in rapidity. The *Vizcaya* was on fire and heading for the shore. Captain Clark, who had been moving about the decks commending officers and men for their good work, and telling his "children" not to expose themselves needlessly, was at this instant standing on top of the after 13-inch turret, conversing with the officer of that turret. The turret officer was deploring the fact that his guns would not bear on the enemy's remaining ships, when suddenly the burning *Vizcaya* was seen off our starboard bow, heading for the beach, and the captain exclaimed, "There's your chance. There's your chance", and in another moment the after turret was thundering away with awful effect. The close range enabled our 6-pounders to play havoc with the *Vizcaya's* upper works, and our fire was very heavy until she drew abaft our starboard beam, when, at 11 o'clock she hauled down her colors and ran ashore at Aserraderos, 18 miles from the Morro. This made the third large burning wreck within 90 minutes.

When the *Vizcaya* gave up the fight and headed for the shore, the *Brooklyn* hoisted the signal "Well done, *Oregon*", and then began the grandest chase in naval history. The *Colon* was now 6 miles ahead, and for a time it looked as if she might escape, but our efficient engineer department proved equal to the occasion, and our speed increased to more than 16 knots. The *Brooklyn*, now broad off our port bow, was steering for the distant headland to cut off the *Colon*, while we were steadily edging in on her and forcing her nearer the shore. We sent our men to dinner by watches; but after getting a bite, they returned on deck to follow the exciting chase and take a pull at their pipes. The *Brooklyn* signaled, "She seems built in Italy", and Captain Clark told the signal officer to answer with the following message: "She may have been built in Italy, but she will end on the coast of Cuba." As we dashed onward, slowly gaining, and soon to be within range, the enthusiasm was at high pitch. An old boatswain's mate stationed in the fighting top gave way to his excited feelings and yelled through a megaphone, "Oh, captain, I say, can't you give her a 13-inch shell, for God's sake." The men in the engineer force, ever unmindful of the frightful heat, were straining every muscle to its utmost, and their heroic officers were assisting the exhausted firemen to feed the roaring furnaces.

Several times the *Colon* turned in as if looking for a good place to run ashore, but each time changed her mind and continued to run for her life. It was 10 minutes to 1 when Captain Clark gave me orders to try a 13-inch shell on her, and soon a 1,100-pound projectile was flying after her. The chief engineer was just coming on deck to ask the captain to fire a gun in order to encourage his exhausted men; and when they heard the old 13-inch roar, they knew that we were within range, and made the effort of their lives.

The scene on the *Oregon's* decks at this time was most inspiring. Officers and men were crowded on top of the forward turrets, and some were aloft, all eager to see the final work of that great day. The *Brooklyn* fired a few 8-inch shells and we fired two 8-inch, but all fell short, and the 8-inch guns ceased firing. The *Colon* also fired a few shots, but they fell far short of their mark. Our forward 13-inch guns continued to fire slowly and deliberately, with increasing range, and the sixth shot, at a range of 9,500 yards (nearly 5 miles), dropped just ahead of the *Colon*, whereupon she headed for the shore. Our men were cheering wildly, and a few minutes later, at 12 minutes after 1 o'clock, a 13-inch shell struck under the *Colon's* stern. Immediately her colors dropped in a heap at the foot of her flagstaff. The bugle sounded "Cease firing." The *Colon* had surrendered and the last shot of July 3 had been fired.

From the date of the battle of Santiago the *Oregon* served in the seven seas of the world honorably and well. She was commanded successively by officers whose names rank high in the records of American naval history. After such a glorious record of war- and peace-time service she was finally placed out of commission at Puget Sound Navy Yard in 1919. Time and later inventions had taken their toll, and the once proud bulldog of the Navy was rendered obsolete for modern fighting. On July 14, 1925, she was delivered to the State of Oregon in the harbor of Portland, my home city, to be preserved for all time as an object of historic and sentimental interest. In order to fully accomplish this purpose, I am introducing a bill which will provide for a permanent landlocked berth in Portland Harbor and an appropriation to finance the work of placing this pride of the Navy where she will be accessible for all time to come to all who wish to visit her. She is serving now as a meeting place for Sea Scouts, Boy Scouts, Girl Scouts, Camp Fire Girls, 4-H club members, Naval Reserves, Navy Mothers of America, Navy Post, V. F. W., and other educational and patriotic groups; thus in peace time serving as a shrine to patriotism and devotion to the highest ideals of our country. It is important to hold in sacred honor such a memorial and to continue the teachings of our forefathers. They may from time to time build bigger and more powerful battleships than the *Oregon*, but they will never build a better one. May I close by quoting the poem by Ruth Coffee Hillis, of Forest Grove, Oreg., dedicated to the *Oregon:*

THE "OREGON"

Morning, off the coast of Cuba;
Ships at anchor, lying tense;
Waiting for some sign or signal
That would break the long suspense.

Since the fall of Santiago
And the coming of our fleet,
Spanish ships within the harbor
Saw no way of safe retreat.

Then Cervera, under orders,
Took his only chance to win;
Made a noble dash for freedom
Past the ships that hemmed them in.

"Speed to westward", cried Cervera,
"Sink the *Brooklyn* and we've won."
But Cervera hadn't reckoned
With the brave ship *Oregon*.

Through fourteen thousand miles of water
Came the *Oregon* for this;
Sprang to action like a demon,
Not a target did she miss.

Racing on to aid the *Brooklyn*,
Leaping like a thing possessed,
Passed the *Iowa* and *Texas*,
Far outdistanced all the rest.

Racing while her guns were speaking;
Spanish ships were falling back,
Powerless to withstand the fury
Of the *Oregon's* attack.

Still one ship was left, the *Colon*;
But the *Oregon* sped on,
Overtook and turned her backward,
And the victory was won.

Modest when her task was finished,
Giving honor to the rest,
Ready when her country called her,
Oregon had stood the test.

Home at last in quiet waters
Of the State whose name she bore
When she clothed herself with glory
Off that distant Cuban shore.

Shall we grudge her care and shelter,
Now her fighting days are done?
Rather, let us bow before her,
Ship of pride, the *Oregon*.

OLD-AGE PENSIONS

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 6623) to amend the Code of Laws for the District of Columbia in relation to providing assistance against old-age wants, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection to the request of the lady from New Jersey?

Mr. BLANTON. Reserving the right to object, I would like to ask a question. Does this bill conform to the provisions of the national bill we passed here in the House recently?

Mrs. NORTON. It does.

The SPEAKER. Is there objection to the request to consider this in the House as in Committee of the Whole?

There was no objection.

The Clerk read the bill, as follows:

[H. R. 6623, 74th Cong., 1st sess.]

A bill to amend the Code of Laws for the District of Columbia in relation to providing assistance against old-age want

Be it enacted, etc., That the care and assistance of aged persons who are in need and whose physical or other condition or disabilities seem to render permanent their inability to provide properly for themselves is hereby declared to be a special matter of public concern and a necessity in promoting the public health and welfare. To provide such care and assistance at public expense a system of old-age assistance is hereby established for the District of Columbia. The terms "assistance" whenever used in this act shall be construed to include relief, aid, care, or support. The pronoun "he" or "his" when used herein shall be construed to include persons of either sex.

SEC. 2. Assistance may be granted only to an applicant who (a) is a citizen of the United States; (b) has attained the age of 65 years or upward; (c) has resided in the District of Columbia for 5 years or more within the 10 years immediately preceding application for assistance; (d) is not at the time of making application an inmate of any prison, jail, workhouse, insane asylum, or any other public reformatory or correctional institution; (e) is not a habitual tramp or beggar; (f) has no child or other person financially able to support him and legally responsible for his support; and (g) has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance.

During the continuance of the old-age assistance no recipient shall receive any other relief from the District of Columbia except for medical and surgical and nursing care.

SEC. 3. The Board of Commissioners of the District of Columbia shall administer old-age assistance under this act through such agent or agency as it may designate. It shall prescribe the form of and print and supply the blanks for applications, reports, and affidavits, and such other forms as it may deem advisable, and shall make rules and regulations necessary for the carrying out of the provisions of this act. The amount of the assistance which any such person shall receive, and the manner of providing it, shall be determined by the Board of Commissioners or its designated agency, with due regard to the conditions existing in each case. Any applicant for old-age assistance whose claim for initial relief or modification of relief is denied may apply to the agency designated by the Commissioners for the administration of this act for review of said claim and the determination of the designated agency on such appeal shall be final except that the Commissioners of the District of Columbia in their discretion may grant a further review of the matters embraced in the aforesaid application.

If, in the opinion of the Board of Commissioners or its designated agency, the recipient is incapable of taking care of himself or his money, it may direct the payment to any responsible person for the benefit of the pensioner, or may suspend payment if deemed advisable.

SEC. 4. All assistance given under this act shall be inalienable by any assignment or transfer and shall be exempt from levy or execution under the laws of the United States and the District of Columbia.

SEC. 5. On the death of a recipient of old-age assistance such reasonable funeral expenses as the Board of Commissioners or its designated agency may deem necessary may be paid for the burial of such person.

SEC. 6. A person requesting assistance under this act shall make his application therefor to the Board of Commissioners or its designated agency. The person requesting assistance may apply in person, or the application may be made by another in his behalf. The application shall be made in writing and under oath.

SEC. 7. Upon the receipt of an application for assistance an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this act and such other information as may be required by the rules hereunder formulated.

SEC. 8. All relief under this act shall be considered from time to time as frequently as may be required by the rules hereunder formulated. After such further investigation as may be deemed necessary the amount and manner of assistance may be changed or the assistance may be withdrawn if it is found that the recipient's circumstances have changed sufficiently to warrant such action, and all cases in which relief is being extended shall be reviewed every 6 months. It shall be within the power of the Board of Commissioners or its designated agency at any time to cancel and revoke assistance, and it may suspend payments for such periods as it may deem proper.

SEC. 9. If at any time the Board of Commissioners or its designated agency has reason to believe that any assistance has been improperly obtained, it shall cause special inquiry to be made. If, on inquiry, it appears that it was improperly obtained, it shall be canceled.

SEC. 10. Any person, who by means of a willfully false statement or representation, or by impersonation, or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain (a) assistance to which he is not justly entitled: (b) a larger amount of assistance than that to which he is justly entitled; (c) payment of any forfeited installment grant; (d) or aids or abets in the buying or in any way disposing of the property of an old-age assistance recipient, without the consent of the Board of Commissioners or its designated agency, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than $500 or imprisoned for a period not to exceed 6 months, or both.

SEC. 11. At the death of recipient of old-age assistance, or of the last survivor of a married couple, the total amount of assistance since the first grant, together with 3-percent interest, shall be deducted and allowed by the proper courts out of the proceeds of his property as a preferred claim against the estate of the person so assisted, and refunded to the Treasurer of the United States to the credit of the District of Columbia, leaving the balance of distribution among the lawful heirs in accordance with law: *Provided*, That upon sufficient cause, such as mismanagement, failure to keep in repair, or the inability of any recipient of assistance properly to manage his property, the designated agency of the Commissioners may demand the assignment or transfer of such property, or a proper part thereof, upon the first grant of such security, or at any time thereafter that it deems advisable for the purpose of safeguarding the interest of an applicant or for the protection of the funds of the District of Columbia. Such agency shall establish such rules and regulations regarding the care, management, transfer, and sale of such property as it deems advisable and shall provide for the return of the balance of the claimant's property into his hands whenever the assistance is withdrawn or the claimant ceases to request it.

SEC. 12. Congress shall annually appropriate and make available to the order of the Board of Commissioners of the District of Columbia such a sum as may be needed for old-age assistance, together with a sufficient sum to defray administrative expenses to be incurred in connection therewith, and include such sums in the annual appropriation act. Should the sum so appropriated, however, be expended or exhausted during the year and for the purpose for which it was appropriated, additional sums shall be appropriated by Congress as occasion demands to carry out the provisions of this act.

SEC. 13. All necessary expenses incurred by the District of Columbia in carrying out the provision of this act shall be paid in the same manner as other expenses of the District of Columbia are paid.

SEC. 14. This act shall take effect 90 days after its passage.

With the following committee amendments:

Page 3, line 5, after the word "case", insert "The Board of Commissioners may in lieu of the assistance herein provided refer any applicant to the Board of Public Welfare for admission to the Home for the Aged and Infirm whenever, in the judgment of the said Commissioners, such action may be in the public interest or in the best interest of the applicant."

The committee amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AUTHORIZING THE PENNSYLVANIA RAILROAD CO. TO BUILD AN OVERHEAD BRIDGE ACROSS NEW YORK AVENUE

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 6656) to authorize the Pennsylvania Railroad Co., by means of an overhead bridge, to cross New York Avenue NE., in the District of Columbia, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection to the request of the lady from New Jersey that the bill be considered in the House as in Committee of the Whole?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Pennsylvania Railroad Co., operating lessee of all of the railroads and appurtenant properties of the Philadelphia, Baltimore & Washington Railroad Co. in the District of Columbia, be, and it is hereby, authorized to establish switch and siding connections with its existing siding tracks in square no. 4263 (also known as parcel 154/44) to cross West Virginia Avenue into and through squares nos. 4105, 4104, and 4099 crossing New York Avenue by means of a suitable overhead bridge, thence to and through the parcels of land known and identified on the plat books of the surveyor's office of the District of Columbia as parcels 153/44, 143/25, and 142/28, and squares 4099 and 4098, to and through the squares known as and numbered 4038 (portions of which are included in parcel 142/28, 4093, south of 4093, and 4098, with all switches, crossing, turnouts, extensions spurs, and sidings as may be or become necessary for the development of the squares and parcels of land above indicated for manufacturing, trading, industrial, and commercial enterprises, and the adequate service thereof by railroad.

SEC. 2. Before any of the work above authorized shall be begun on the ground or a plan or plans thereof shall be prepared and submitted to the Commissioners of the District of Columbia for their approval and only to the extent that such plans shall be so approved shall said work or any portion thereof be permitted or undertaken.

SEC. 3. Subject only to the approval of the Commissioners of the District of Columbia the crossing of any public street or alley other than New York Avenue, within the limits of the total area above noted, may be at or on grade.

SEC. 4. Nothing herein contained shall be construed as limiting or abridging the authority of the Commissioners of the District of Columbia under the act of Congress approved March 3, 1927 (44 Stat. L. 1353), entitled "An act to provide for the elimination of grade crossings of steam railroads in the District of Columbia, and for other purposes."

SEC. 5. That Congress reserves the right to amend, alter, or repeal this act.

With the following committee amendment:

Page 2, line 1, after the word "through", strike out down to and including the word "Railroad", in line 13, and insert the following: "square no. 4105 along and adjacent to the existing main line tracks, thence into and through square no. 4104 and 4099 crossing New York Avenue by means of a suitable overhead bridge thence to and through square no. 4099 and the parcels of land known and identified on the plat books of the Surveyor's Office of the District of Columbia as parcels 153/44, 143/25, 142/25, and 142/28, to and through the square known as and numbered 4038 (portions of which are included in parcel 142/28), 4093, south of 4093, and 4098, with all switches, crossings, turnouts, extensions, spurs, and sidings as may be or become necessary for the development of the squares and parcels of land above indicated for such uses as may be permitted in the district or districts in which said squares and parcels of land are now or may hereafter be included as defined in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission."

On page 3, line 15, after the word "grade", insert "The said railroad shall, when and as directed by the Commissioners of the District of Columbia, construct at its entire cost and expense, an additional overhead bridge for the track hereby authorized to be established over such other street located between Montello Avenue and New York Avenue as such street may now or may hereafter be shown on the Plan of the Permanent System of Highways."

Page 3, line 2, after the word "the", insert the word "use."

The committee amendments were agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

TO AMEND ACT PROVIDING FOR UNION RAILROAD STATION, DISTRICT OF COLUMBIA

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 7447) to amend an act to provide for a Union Railroad Station in the District of Columbia, and for other purposes, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. The gentlewoman from New Jersey calls up the bill H. R. 7447 and asks unanimous consent that it be considered in the House as in Committee of the Whole. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That so much of section 5 of an act of Congress entitled "An act to provide for a Union Railroad Station in the District of Columbia, and for other purposes", approved February 28, 1903 (Public, No. 122, 32 Stat. 909), which reads:

"No streets or avenues, except Ninth, Twelfth, and Fifteenth Streets, and New York Avenue, shall be opened across the railroads constructed under authority of this act between Florida and Montana Avenues, and said Ninth, Twelfth, and Fifteenth Streets, when and as opened, shall be carried above the railroads by suitable viaduct bridges, the cost whereof, with their approaches within the limits of the right-of-way, shall be paid by the terminal company, but shall be maintained as in the case of other public highways in the District of Columbia", be, and the same is hereby, amended to read as follows:

"No streets or avenues shall be opened across the railroads constructed under the authority of this act between Florida Avenue and an extension of the west line of Twenty-second Street NE. from Bryant Street to New York Avenue, except New York Avenue and except as hereinafter provided; the Baltimore & Ohio Railroad Co. and the Philadelphia, Baltimore & Washington Railroad Co. shall construct, within 2 years after being directed so to do by the Commissioners of the District of Columbia, a suitable viaduct bridge above the said railroads and above New York Avenue connecting the intersection of Brentwood Road and T Street NE., with the extension of Mount Olivet Road NE., at its intersection with New York Avenue, as the same may be shown on the plan of the permanent system of highways at the time the said Commissioners direct the construction of said viaduct bridge; the terminal company shall pay the entire cost and expense of the bridge structure, including the necessary retaining walls in connection therewith, north of the southerly line of New York Avenue, and, in addition thereto, so much of the approaches to said viaduct bridge as lie between the southerly line of Brentwood Road and the northerly line of New York Avenue NE. as now publicly owned, the terminal company shall dedicate or cause to be dedicated to the District of Columbia such land lying between the southerly line of Brentwood Road and the northerly line of New York Avenue NE., as now publicly owned, as may be necessary for the location of such bridge structure and the approaches thereto in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said viaduct bridge; the cost of maintenance of said viaduct bridge, retaining walls, and approaches is to be borne entirely by the District of Columbia; and said viaduct bridge, retaining walls, and approaches shall be constructed in accordance with plans and specifications and at a location approved by the Commissioners of said District; and the Baltimore & Ohio Railroad Co. and the Philadelphia, Baltimore & Washington Railroad Co. shall construct, within 2 years after being directed so to do by the Commissioners of the District of Columbia, a suitable subway or underpass beneath the tracks of said companies within the lines of the street connecting the intersection of New York Avenue and West Virginia Avenue NE., as the same may be shown on said plan of the permanent system of highways at the time said Commissioners direct the construction of said subway or underpass; the said railroad companies shall pay in equal shares the entire cost and expense of the subway or underpass structure, exclusive of all roadway and sidewalk paving, including the necessary retaining walls in connection therewith, and in addition thereto, so much of the approaches to said subway or underpass as lie within the limits of the said railroad companies' properties; exclusive of all roadway and sidewalk paving; each of said railroad companies shall dedicate or cause to be dedicated to the District of Columbia such land lying within the limits of said railroad companies' properties as may be necessary for said street in accordance with the plan of the permanent system of highways as said plan may be established at the time the Commissioners direct the construction of said subway or underpass; the cost of maintenance of said subway or underpass structure, retaining walls, and approaches is to be borne entirely by the District of Columbia; and the said subway or underpass and the retaining walls and approaches shall be constructed in accordance with the plans and specifications and at a location approved by the Commissioners of said District."

SEC. 2. Congress reserves the right to alter, amend, or repeal this act.

With the following committee amendments:

Page 2, line 24, after the word "bridge", strike out the rest of line 24 and all of line 25, and on page 3, strike out all of lines 1, 2, 3, 4, 5, and 6 down to and including the word "company", and insert in lieu thereof the following: "the Baltimore & Ohio Railroad Co. and the Philadelphia, Baltimore & Washington Railroad Co. shall pay in equal shares the entire cost and expenses of the bridge structure, including the necessary retaining walls and approaches in connection therewith, between the southerly line of New York Avenue as now publicly owned, and the southerly line of Brentwood Road as now publicly owned; the Baltimore & Ohio Railroad Co. and the Philadelphia, Baltimore & Washington Railroad Co."

Page 4, line 16, after the word "structure", strike out "exclusive of all roadway and sidewalk paving"; and in line 20, after the

word "properties", strike out "exclusive of all roadway and sidewalk paving."

Page 5, after line 11, add the following:

"SEC. 3. If this amendatory act or any part thereof shall be declared invalid, so much of this act as forbids the opening of Ninth, Twelfth, and Fifteen Streets shall be void, and the duty of the terminal company referred to in said act of Congress approved February 28, 1903, to construct suitable viaduct bridges and the approaches thereto to carry said streets over the railroads as required by said section 5 of said act of February 28, 1903, as originally enacted, shall remain in full force and effect and unimpaired by this amendatory act."

The committee amendments were severally reported and severally agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider laid on the table.

GERMAN ORPHAN HOME OF THE DISTRICT OF COLUMBIA

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 7874) to change the name of the German Orphan Asylum Association of the District of Columbia to the German Orphan Home of the District of Columbia.

The SPEAKER. The gentlewoman from New Jersey calls up a bill, which the Clerk will report.

The Clerk read as follows:

Be it enacted, etc., That the name of the German Orphan Asylum Association of the District of Columbia, which was created a body politic and corporate by the act entitled "An act to reincorporate and preserve all the corporate franchises and property rights of the de facto corporation known as the 'German Orphan Asylum of the District of Columbia'," approved February 6, 1901, is hereby changed to the "German Orphan Home of the District of Columbia"; but this act shall not be construed to affect any obligations, rights, or privileges of said corporation.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider laid on the table.

UNEMPLOYMENT COMPENSATION IN THE DISTRICT OF COLUMBIA

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 7167) to provide for unemployment compensation in the District of Columbia, to authorize appropriations, and for other purposes, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. The gentlewoman calls up the bill H. R. 7167 and asks unanimous consent that it be considered in the House as in Committee of the Whole. Is there objection?

Mr. BLANTON. Mr. Speaker, I reserve the right to object. Does this bill conform to the provisions of the social-security bill recently passed by the House?

Mrs. NORTON. It conforms except in one particular.

Mr. BLANTON. In what particular is there a change?

Mrs. NORTON. This bill applies to the employment of 4 people, whereas the Federal bill as passed by the House calls for 10 people. As I understand it, however, the security bill has been changed in the Senate to four.

Mr. BLANTON. It meets the sentiment of the Senate as expressed in that amendment?

Mrs. NORTON. Yes.

The SPEAKER. Is there objection to considering the bill in the House as in Committee of the Whole?

There was no objection.

Mr. ELLENBOGEN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the pending bill at this point in the RECORD.

The SPEAKER. Is there objection?

There was no objection.

THE ELLENBOGEN BILL FOR UNEMPLOYMENT COMPENSATION FOR THE DISTRICT OF COLUMBIA

Mr. ELLENBOGEN. Mr. Speaker, I want to discuss H. R. 7167, the bill to provide unemployment compensation in the District of Columbia.

The subcommittee on fiscal affairs of the Committee on the District of Columbia, of which I have the privilege of being chairman, and the entire membership of the Committee on the District of Columbia has given the subject of unemployment compensation for the District of Columbia very thorough study and consideration. It was felt that the bill for the District of Columbia should be most carefully drawn.

It would not only provide for unemployment compensation for the employees in the District of Columbia, but by virtue of the key position enjoyed by the District of Columbia, and because of the fact that it was an enactment of the National Congress, this bill could serve as a model bill for the States of the Union. We felt that we should enact a measure that would bring credit to the Congress and could serve as a beacon light which the States in the Union could safely follow.

I may be permitted to point out, Mr. Speaker, that the Committee on the District of Columbia, and I myself as its author and as chairman of the subcommittee which was in charge of the bill, were proud of its provisions. We feel that it is a good bill, a bill which deserves to be well considered by the various State legislatures when they come to draft their own unemployment compensation laws.

THE NEED FOR UNEMPLOYMENT INSURANCE

As to the need for unemployment compensation, economists, manufacturers, and businessmen were united in their belief that an unemployment compensation act was needed for the District of Columbia.

While the District has been in a more favorable position than the country as a whole there has been considerable unemployment in the District of Columbia. The unemployment census of 1930 showed 4.9 percent of the gainful workers of the District unemployed. Unemployment increased, until the average unemployment in 1933 reached 21 percent of the gainful workers. If Federal and District employees are included in our calculations as they should be, we find an even larger unemployment percentage in the District. It is estimated in 1930 there was an average of 14,000 unemployed in the District; in 1931 there were 31,000; in 1932, 47,000; in 1933 there were 37,000; and in 1934 we estimate unemployment at 42,000.

In the report on this bill (Rept. No. 858) you will find detailed data as to relief for the District of Columbia. It appears that from August 1932 to January 1935 a total of $9,093,715.01 was paid out for relief in the District of Columbia.

Recently an analysis was made of 6,631 relief cases in the District of Columbia. It appears that out of these cases 817, or 12.9 percent, had been employed less than 6 months, which is the maximum normal duration of benefits under this bill.

In the unemployment census of 1930 only 10.1 percent of the unemployed in the District of Columbia had been out of employment for a period longer than 26 weeks. At that time 91 percent of the unemployed would have received unemployment insurance benefits, if this bill had been in force. Thus it is clear that during prosperous times and in the early stages of a depression most unemployed would be cared for under the provisions of this bill; but further, even during severe depressions a substantial number of the unemployed would be cared for under a system of unemployment compensation set up in this bill.

THE ADVANTAGES OF UNEMPLOYMENT INSURANCE OVER UNEMPLOYMENT RELIEF

Before the depression unemployment insurance in Great Britain was often criticized as being a "dole." During the last 5 years, as millions of unemployed in the United States have been forced to go on relief, it is gradually being understood that the United States actually has a dole system, and that Great Britain has been able to provide for unemployment insurance in a much superior way. Unemployment insurance is superior to relief in many respects. Here are some of them:

First. It provides more adequate financial support to the unemployed than relief.

Second. It prevents heavy drains upon the resources of municipal, State, and Federal Governments by resorting to reserves built up during previous periods of employment.

Third. It encourages the stabilization of employment by the employer.

Fourth. It maintains the purchasing power of the unemployed, aids in the stabilizing of consumption, and thus prevents the deepening and the prolonging of depressions.

Fifth. It is sufficient to assure a definite income to the jobless during periods of unemployment resulting from seasonal and other variations in the use of the products of an industry and from technological causes. It takes care of the employee during all periods of unemployment except those of a long-continued depression.

Sixth. It maintains the self-respect and the morale of the unemployed by paying him unemployment-compensation benefits on a contractual basis, to which he is entitled as a matter of right.

HISTORICAL DEVELOPMENT OF UNEMPLOYMENT INSURANCE

Out-of-work benefit payments were instituted by trade unions in Europe as early as 1850. Beginning in 1890 municipalities initiated unemployment-insurance plans. In 1901 the city of Ghent, in Belgium, instituted the payment to the unemployed of subsidies in addition to the payments paid them by their unions. This system spread rapidly throughout Europe. The method of paying subsidies to trade unions, municipalities, and provincial unemployment-benefit plans at present is followed in 10 of the smaller European countries, as shown in the following table:

TABLE III.—*Countries in which voluntary insurance laws have been enacted and number of workers covered in each*

Country	Date of law	Number insured
Belgium	Dec. 30, 1920	1,038,000
Czechoslovakia	July 19, 1921	1,500,000
Denmark	Apr. 9, 1907	337,000
Finland	Nov. 2, 1917	15,000
France	Sept. 9, 1905	192,000
Netherlands	Dec. 2, 1916	502,000
Norway	Aug. 6, 1915	47,000
Spain	May 25, 1931	50,000
Sweden	Jan. 1, 1935	320,000
Switzerland (11 cantons)	Oct. 17, 1924	195,000
Total number insured		4,096,000

The first compulsory unemployment-insurance law was passed in Great Britain in 1911. At first, limited to a few industries, it was extended to practically all workers in 1920. Italy passed a law in 1919, Austria in 1920, and Germany in 1927. At present there are eight countries in Europe, and Queensland in Australia, with compulsory laws covering about 38,000,000 workers, as shown in table IV.

TABLE IV.—*Countries in which compulsory insurance laws have been enacted and number of workers covered in each*

Country	Date of law	Number insured
Australia (Queensland)	Oct. 18, 1922	175,000
Austria	Mar. 24, 1920	969,000
Bulgaria	Apr. 12, 1925	280,000
Germany	July 16, 1927	17,920,000
Great Britain and Northern Ireland	Dec. 16, 1911	12,960,000
Irish Free State	Aug. 9, 1920	359,000
Italy	Oct. 19, 1919	4,000,000
Poland	July 18, 1924	954,000
Switzerland (13 cantons)		325,000
Total number insured		37,942,000

GREAT BRITAIN

The British system of unemployment insurance was instituted in 1911. At first is covered only six industries which had a high rate of unemployment. During the war the system was extended to the munitions industry, and in 1920 it was extended to practically the entire industrial population.

GERMANY

After almost 10 years of experience with unemployment relief following the war, Germany enacted an unemployment-insurance system in 1927 covering approximately 18,000,000 workers. Almost immediately thereafter unemployment began to increase so that the fund rapidly fell into debt. Benefits had to be restricted in 1932. The benefit rates were reduced and benefits were shortened to a duration of 20 weeks, with a needs test after 6 weeks of benefits. Since then the benefit rates have been slightly raised and the system extended to several new classes of workers.

THE HISTORY OF UNEMPLOYMENT COMPENSATION LAWS IN THE UNITED STATES

In 1932 Wisconsin passed an unemployment compensation law which is based on the individual reserve system and not on a State-wide pool.

It is widely contended by authorities that the Wisconsin plan is designed primarily for the purpose of stabilizing employment and not for the purpose of making the worker secure against the financial hazard of unemployment. It is clear that the Wisconsin plan is not unemployment insurance. Insurance is based upon the distribution of risks and the pooling of reserves, a principle which is not employed in the so-called "Wisconsin plan." It is my belief that the system employed in the unemployment compensation law passed in Wisconsin is not a good one, in that it fails to give reasonable security to workers, and it is my fond hope that it will not be followed in other States.

I believe that the State-wide-pool fund is far superior in every respect to the Wisconsin plan. Unemployment insurance should be a State-wide pool system. It should contain a credit rate so that employers who are able to stabilize their employment should enjoy cheaper rates than employers whose employment is not stabilized and who contribute a very large part of the unemployment.

In the course of this year the States of New York, of Washington, of Utah, and of New Hampshire have already passed unemployment insurance laws. In a number of other States laws are now pending for the enactment of unemployment compensation.

THE DEMOCRATIC PLATFORM OF 1932 PLEDGED THE ENACTMENT OF UNEMPLOYMENT INSURANCE LAWS

In the Democratic platform of 1932 we find a pledge for the enactment of unemployment compensation laws in the States of the Union. That pledge is as follows:

We advocate unemployment and old-age insurance under State laws.

In two messages President Franklin D. Roosevelt asked the Congress to pass a Federal social-security law to carry out that pledge, and he appointed the Committee on Economic Security for the purpose of carrying on such studies and making such recommendations as would be necessary to give social security to the people of the United States. This Committee on Economic Security presented a report to the President, which was submitted to Congress, and which is the basis of the Federal social security bill as well as the various bills which have been passed or proposed in the States.

A TRIBUTE TO THE COMMITTEE ON ECONOMIC SECURITY

I want to pause for a moment to pay tribute to the President's Committee on Economic Security. It has performed its duties admirably well. Its report and the other studies and tables which it submitted to the Congress are well considered, carefully thought out, and logically constructed documents. While the efforts of the Committee on Economic Security have been but little noticed by the American people, I want to state emphatically that without the efforts and the painstaking labor of the Committee on Economic Security it would have been impossible to formulate, at this time, the Federal social-security bill and the various State bills.

I want to pay particular tribute to Dr. Edwin E. Witte, executive director of the Committee on Economic Security, Dr. Witte is an outstanding social economist. He has guided, directed, and supervised the Committee on Economic Security with great skill and devotion. He has labored day and night in order to formulate a program of social security which the Congress of the United States and the various State legislatures would be willing to pass. He and his splendid coworkers have collected and presented in an illuminating way the great amount of historical, statistical, and other material bearing upon social security.

I also want to pay a high tribute to Dr. Merrill G. Murray, an associate consultant of the Committee on Economic Security. Dr. Murray collaborated in drafting H. R. 5534, which I introduced, the first unemployment law for the

District of Columbia. His assistance was of immeasurable benefit in redrafting the bill and to put it in the form in which it is now before you, H. R. 7167.

Dr. Murray also aided in the preparation of the report on this bill; a report which contains valuable data and which deserves to be widely studied.

I say without hesitation that without the continuous services of Dr. Murray this bill could not have been what it is. The citizens of the District of Columbia, the Committee on the District of Columbia, its subcommittee on fiscal affairs, and particularly I, myself, the chairman of that subcommittee, owe a deep debt of gratitude to Mr. Murray for his invaluable aid in presenting a satisfactory unemployment compensation law for the District of Columbia and for the devotion and love which he has brought to that work.

PROVISIONS OF THE BILL

Under this bill, Mr. Speaker, an unemployment compensation system will be established covering all employees of private establishments in the District of Columbia which employs four persons for at least 13 weeks in a year. Federal employees are exempted and also employees of the District of Columbia who are employed on an annual salary basis, including officers and teachers. Workers employed by the District of Columbia on a per diem basis are included.

The funds for unemployment compensation will be raised through contributions of employers and of the District. Employers will be required to contribute an amount equal to 3 percent of their pay roll, and the District will contribute an amount equal to 1 percent of the contribution of the employers. Contributions will commence January 1, 1936. Benefits for total unemployment will be paid at the rate of 40 percent of former wages plus 10 percent for a dependent spouse and 5 percent for each other dependent, except that not more than 65 percent of the wage, or $15 per week, will be paid. If an employee becomes partially unemployed and fails to earn at least $2 more than the benefits he would receive if wholly unemployed, he will be paid the difference in partial benefits. For example, if a married man with no dependents other than his wife has been earning $20 per week, he would be entitled to 50 percent of his wages in benefits, or $10 a week, if wholly unemployed. If partially unemployed, his earnings must fall below $12 per week before he can draw any benefits. If his earnings fell to $10 per week, he would be entitled to $2 in partial benefits; if his earnings fell to $8 per week, he would be entitled to $4 in partial benefits per week.

An employee will be limited to 1 week of benefits for each 4 weeks of employment in the preceding 3 years up to a maximum of 26 weeks of benefits in a year. In addition, if he has been steadily employed without drawing benefits for more than 2 years, he will be eligible for an additional week of benefits for each 20 weeks of employment in the third, fourth, fifth, and sixth years preceding his unemployment, so that if he has been steadily employed for 6 years he can receive approximately 11 additional weeks of benefits.

In order to be eligible for benefits an employee must have worked at least 13 weeks in the preceding year, must be able to work and available for work, must have served a waiting period of 3 weeks of unemployment before benefits commence, and must not be engaged in a strike or jurisdictional labor dispute. If he voluntarily quit without good cause or was discharged for misconduct, he will be disqualified from benefits for from 1 to 6 weeks. If he refuses to accept suitable employment offered him, he will be disqualified from benefits for 4 weeks. Provision is made for a fair hearing of claims for benefits. If an employee is denied benefits he may appeal to a local committee with employer and employee representatives sitting on it and, finally, to the administrative board. He will have access to the courts on points of law.

The act would be administered by the Social Security Board appointed by the President to administer the Federal act (H. R. 7260). However, a commission of three members, representing employers, employees, and the public, and appointed by the Commissioners of the District of Columbia, must be consulted by the Board before it selects a director, makes regulations, or determines policies. This commission will also have authority to study the operation of the act and make recommendations for changes in the law, which must be submitted to the Congress by the Social Security Board. Claims for benefits will be filed and paid through the public employment offices in the District.

The Board is authorized to enter into arrangements with the surrounding States whereby employees moving from the District can carry their benefit rights with them to the unemployment compensation fund of another State and vice versa.

The bill authorizes an appropriation of $750,000 for the contributions of the District during the fiscal year ending 1936 and directs the Commissioners of the District to submit annual estimates as to needed future appropriations.

Since unemployment, particularly in a period of depression, is to a very considerable extent due to change of economic conditions and not to individual employers, and since unemployment benefits will materially reduce the relief burden on the community, it is considered socially and economically desirable that part of the cost of unemployment benefits should be levied on the entire community through taxation.

Society is in a large way responsible for the cycles of prosperity and depression, and therefore society should certainly bear a part of the costs of unemployment compensation.

It is contended, in some quarters, that the entire amount necessary for the payment of unemployment compensation benefits should be raised through graduated income and inheritance taxes, respectively. There is considerable force and logic in that argument. This bill, which provides for the payment of the costs of unemployment insurance, by the District of Columbia, by general taxation to the extent of 25 percent of the entire cost, meets that argument to a limited extent.

THE CASE AGAINST EMPLOYEE CONTRIBUTION

Some of the employers who appeared at the hearings on this bill endorsed the bill and the principle of the contribution from the District of Columbia, but also argued in favor of additional contributions from employees.

The arguments in favor of employee contribution are fallacious. In fact, I am convinced that to exact employee contribution, in a time of a general and deep depression, for the purpose of building up reserves to pay unemployment compensation benefits at a later date, would be nothing short of economic folly, and a blunder of the first magnitude. Employees should not be required to contribute to the unemployment reserves to be built up under this bill for the following reasons:

First. In a time of a far-reaching depression, such as we are now having, we should do everything within our power to encourage consumption and to discourage the building up of unused capital reserves. Employees covered by provisions of unemployment-compensation laws spend all, or practically all, of their wages and salaries for the purchase of the necessities of life. If we were to exact contributions from them we would to that extent reduce their purchasing power and therefore reduce consumption. Their contributions would be paid into unemployment-insurance reserves, which under the terms of the Federal law could not be touched for 2 years. (Under the terms of the District law payment of benefits start in 1 year.) These unemployment-insurance reserves, therefore, could not be used or paid out for consumption for a period of at least 2 years.

To exact employee contributions, therefore, means the transfer of funds currently used for consumption, into reserves which are to remain unused and unexpended for at least 2 years. Thus, it must be clear to everyone who has given this problem any thought, that to exact employee contribution would be to reduce current purchasing power and current consumption to the extent of such employee contributions.

If employees' contributions at the rate of 1 percent of wages were generally exacted in all the 48 States, they would

amount to approximately $250,000,000 a year, or $500,000,000 in 2 years, before the payment of unemployment compensation benefits could begin in the various States under the provisions of the Federal bill.

We would therefore take $500,000,000 out of the current purchasing power and put it into unused reserves. This would clearly be deflationary and would tend to deepen the depression, instead of bringing about recovery.

It would be distinctly contrary to the policy of public works and spending of the Roosevelt administration to the extent of $250,000,000 a year or $500,000,000 for the next 2 years. It would nullify a similar amount of money spent under the public-works program.

It would be folly for this administration to try and prime the pump by the expenditure of public-works funds and to cut down current purchasing power and current consumption by the collection of employee contribution toward unemployment-insurance funds.

Second. Unemployment contributions are a logical part of the cost of production and therefore should be paid by the employer like other costs of production.

(a) The employer must pay interest charges on the bonded indebtedness, whether his plant is working or not. His overhead costs continue, regardless of the rate of operation. He calculates interest on machinery as a part of the cost of production, regardless of whether the machinery is idle or working. The cost of keeping the unemployed should be at least on the same level as the cost of amortizing costs of machinery.

(b) Unemployment compensation is on the same level as workmen's compensation, which was bitterly opposed when it was first proposed and is in some quarters still being opposed. Workmen's compensation is now universally deemed to be a part of the cost of production and so should be unemployment compensation.

Third. Without requiring a definite contribution the employee in fact contributes much more than the employer in the following ways:

(a) He contributes as a consumer in purchasing goods carrying higher prices, since the employer will in most cases pass on his contribution in higher prices of his products.

(c) When he is unemployed and receives compensation benefits, if he is a single man, he only gets 40 percent of his wages, and he thereby contributes 60 percent of his wages. If he is a married man with three children, he receives 65 percent of his wages, and therefore he still contributes 35 percent of his wages.

(d) After the period during which he is entitled to unemployment-compensation benefits he receives no unemployment-compensation benefits at all, and therefore contributes the entire amount of his wages or salary.

THE STANDARD OF BENEFITS

Benefits may be paid at a flat rate with the design of maintaining the worker at a subsistence level, or benefits may be paid as a percentage of his normal earnings so that he may, to some extent, be able to maintain his former standard of living. This bill is a compromise between these alternatives. Benefits are based on normal earnings but at a very low rate for the single man, which may be supplemented if an employee is married or has dependents.

MERIT RATING OF EMPLOYER CONTRIBUTIONS

The representatives of employers appearing at the hearings on this bill all argued for varying the rates of contribution by employers in relation to the degree that they stabilize their employment. I believe that an unemployment-compensation bill should provide not only for the payment of unemployment compensation to the jobless, but it should also endeavor to bring about stabilization of employment as far as it is possible. I believe that we must find a way to give a definite financial incentive to the employer to stabilize employment so as to reduce seasonal and other unemployment. The problem is how to reward the employer for giving steady employment and at the same time to protect adequately the workers in firms that did not give regular employment.

An extreme form of rewarding the employer for giving steady employment is embodied in the Wisconsin unemployment-reserves law. This law allows each employer to have a separate reserve account out of which benefits are paid only to his own former employees. This account may be kept in the State fund, or an employer may have his own trust fund or merely maintain a bookkeeping reserve. When an employer's reserve reaches an average of $50 per employee, his contribution may be reduced; and when it reaches an average of $75 per employee, the contribution may entirely cease. If the employer is compelled to shut down his factory entirely, the reserve would be wholly inadequate to pay the benefits promised to his employees. Furthermore, if he only maintains a bookkeeping reserve and becomes bankrupt, his employees will receive little or nothing in benefits.

I believe that the Wisconsin plan is unsound and that the principle of pooling the risks of unemployment throughout the States or in this case the District of Columbia is far superior and should be retained, so as to make a genuine insurance measure. Since unemployment is largely an economic problem beyond the control of the individual employer, and since the policies of one industry often cause unemployment in another, it was considered that to a considerable extent the employers should be required to share one another's burden. Recognizing, however, that unemployment is also due to the policies of the individual employer and that to some extent he can stabilize his employment, the bill provides for a variation in contributions within certain limits.

The Federal bill as it passed the House makes a tax of 3 percent mandatory, and, therefore, we could not reduce the contribution from the employers under 3 percent of his pay roll as we had intended to do and as H. R. 7167 originally provided for. But in order to provide an incentive for the employer to stabilize his employment, as much as possible, or if you prefer to call it "impose a penalty on the employer who fails to stabilize his employment conditions", the bill provides that an employer who has a higher rate of unemployment than the average unemployment should pay a higher tax rate, viz, up to 5 percent of his payroll.

PREVENTIVES OF MALINGERING

One of the fears voiced by opponents to unemployment insurance is that it will encourage malingering so that workers will prefer to draw benefits instead of working. The experience in foreign countries belies this fear, however; repeatedly, investigations of charges that there was malingering have resulted in producing little evidence of it.

It is probable that some persons will abuse unemployment compensation, just as they now abuse fire or accident insurance. The bill, however, establishes many safeguards against any misuse of unemployment benefits. In the first place, the rate of benefits provided is so modest that few persons would prefer the benefits to the much higher amounts they could earn through employment.

More specifically, the bill requires each person receiving benefits to register regularly at a public employment office and to apply for and accept any suitable employment offered him. Although, during times of unemployment, the employment office will be unable to offer jobs to all recipients of benefits, it will have sufficient jobs at its command to offer to those whom it suspects are work shy. The worker will also be ineligible for benefits for a number of weeks if he quits without good cause or is discharged for cause.

WHEN SHOULD THE SYSTEM START?

Because of the large increase in the number of Federal employees, the District of Columbia is in a much more prosperous condition than other parts of the country. The employers in the District can well afford to have the system go into full operation by the first of next year. I believe that the gradual stepping up of the tax from 1 to 3 percent, as proposed in the social-security bill, is not necessary for the District, because of its favorable economic condition, and that a tax of 3 percent should be levied in the District. The bill so provides.

ACTUARIAL BASIS FOR THE BILL

With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country, and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to estimate the benefits which could be paid in the District of Columbia in the future under the provisions of the bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment-insurance plan, on the order of that proposed in the bill, had been in effect in the District for a period of years, construct estimated experience tables for such a plan, and then study the behavior of such hypothetical experience as a guide to the future. Unfortunately, the dearth of statistics for the District of Columbia pertinent to the unemployment problem makes such calculations for the District very difficult. The only recourse when District statistics are wholly inadequate is to estimate behavior in the District in terms of United States figures. Such estimates have been worked out by the actuarial staff of the Committee on Economic Security and have been adjusted as well as may be to the particular situation in the District of Columbia.

The District unemployment-compensation bill provides that 1 year elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will, of course, have to be instituted for administrative purposes when the plan goes into effect, and these records will furnish some data which should be analyzed before benefit payments get under way, since the estimates presented herein are of dubious value due to the present paucity of statistics pertinent to unemployment compensation. Such an analysis would probably indicate that corrections should be made in the estimates included herein.

EMPLOYMENT AND UNEMPLOYMENT STATISTICS

In constructing statistics for the use of the District, a survey of all available statistics on unemployment and employment has been made. Virtually no data on unemployment for the District is available except those in the United States Census of Unemployment of April 1930.

The compilation of employment statistics prior to 1930 was very limited. No indexes of general employment are known for these years.

During the last 4 or 5 years more complete and reliable employment statistics have been gathered. The United States Bureau of Labor Statistics has been compiling national employment indexes, month by month, since 1929, for the following industrial groups: Manufacturing, wholesale trade, retail trade, mining, transportation, telephone and telegraph, light and power, and hotels. In 1933 the scope of the field covered was enlarged by the addition of real estate, banking, insurance, and canning and preserving industries. Since 1932 these indexes have been broken down by political divisions resulting in the first monthly indicators of employment for the District of Columbia.

Utilizing the Bureau of Labor Statistics indexes, the United States Censuses of Occupation and Unemployment of April 1930, the actuarial staff of the Committee on Economic Security made estimates of yearly average employment and unemployment for the District for each year, 1930 through 1933, the results of which are shown in table VI.

TABLE VI.—*Estimated average, nonagricultural employment and unemployment in the District of Columbia, 1930–33*

Year	Gainful workers	Employed workers	Unemployed workers	
			Number	Percent of gainful workers
1930	243,000	229,000	14,000	5.8
1931	245,000	214,000	31,000	12.7
1932	246,000	199,000	47,000	19.1
1933	247,000	210,000	37,000	15.0

The dependability of these estimates is subject to question, at least for part of the period, because of the inadequacy of the data upon which they were based, and also because of the unrefined statistical methods by which they were treated due to the limited time available for study. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They, therefore, may be used as a guide in the absence of better data.

COVERAGE

The coverage of the District of Columbia unemployment-insurance bill includes all gainful workers employed in private establishments having four or more employees. This excludes the self-employed—independent hand tradesmen, professional people, owners, proprietors, and operators; employees engaged in public service; and employees working in establishments having three or less employees. The latter exclusion results in a virtual elimination of all employees in professional and domestic service.

A rough approximation of the number of gainful workers who would have been covered in April 1930 by a plan of this sort had one been in operation for some years in the District is 98,000.

This figure indicates the total number of workers (the employed plus the unemployed) who would have come within the scope of the plan at that date. If adjusted to account for natural growth of the working population, it would approximate the maximum number of gainful workers who could be covered by the plan in the District of Columbia at any time. This indicates that the District of Columbia would have had a maximum of about 40 percent of its working population covered. It should be borne in mind, however, that the groups included in that coverage are those which suffer the largest burden of unemployment. For the United States as a whole, three-fourths of all unemployment is estimated to occur within the group which would be covered by the plan, although that group represents only one-half of the working population.

The number of workers who would be covered if a plan were initiated now in the District of Columbia is approximately 80,000. A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan until the maximum of 98,000 might be reached. The speed with which this may happen depends largely upon the swiftness with which recovery takes place.

INCOME THROUGH CONTRIBUTIONS

The funds for the District of Columbia unemployment-insurance-system bill are to be raised by a 4-percent contribution based upon the pay rolls of those employed in the covered employments.

The total income that would have been collected in 1930 by such a levy within the District had a plan been in operation for some time is approximately $4,400,000. Because of the lack of data, estimates for other years could not be obtained. The income in 1930 is probably a fair guide, however, since 1930 was an average year characterized by neither prosperous nor extremely depressed business conditions.

The income under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in the pay received by them. Both factors will have an important bearing on the total amount raised. Tracing the estimated income through the years 1922–33 for the United States as a whole, a peak in yearly amounts collected appeared in 1929 which was about 80 percent greater than the low reached in 1933. Since low rates of pay tend to go hand in hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits will be the greatest. And, unless reserves had accrued during less adverse times to meet depression emergencies, drastic measures would then have to be taken to maintain the system on a solvent basis.

BENEFITS

The scarcity of data on employment and unemployment statistics in the District of Columbia makes it impossible to accurately calculate the extent of benefits which can be allowed within it. Estimates for the United States as a whole have been utilized and such estimates have been roughly adjusted for the District of Columbia according to the variation in their unemployment experience from the average in the United States.

The bill proposes (1) a rate of weekly benefits of 40 percent of full-time wages, an additional 10 percent for a dependent spouse, and 5 percent for each dependent relative, not to exceed a $15 maximum; (2) compensation of partial unemployment only to the extent that an employee's wages and benefits combined will not exceed by more than $2 the weekly benefit to which he would be entitled if totally unemployed; (3) a ratio of 1 week of benefits to every 4 weeks of employment; (4) certain disqualifications or penalties for unemployment caused by strikes, voluntary quitting, or discharge for misconduct; and other minor provisions all of which affect the maximum number of weekly benefits that may be paid in any year to an unemployed worker. Even if the above provisions are not changed the maximum duration of benefits that may be provided is still contingent on what decision is reached as to (1) the contribution rate imposed and (2) the length of waiting period required.

EFFECT OF THE CONTRIBUTION RATE ON DURATION OF BENEFITS

With a 3-week waiting period, a 3-percent contribution would roughly have permitted the payment of 16 weeks of benefit for the District of Columbia, a 4-percent contribution rate would have increased the duration of benefits to about 24 weeks, and a 5-percent contribution would have made the payment of about 40 weeks of benefits possible based on estimated experience through the years 1922–30. Thus the increase in the length of benefits is greater in proportion than the increase in the contribution rate. This is explained by the distribution of the unemployed according to the duration of their unemployment taken from surveys or censuses of unemployment, which show that a larger proportion of the idle are unemployed for short periods of time than are unemployed for long periods. For example, on the basis of records of about 5,000,000 unemployed, 21 percent were unemployed 4 weeks or less, 13 percent were unemployed 5 to 8 weeks, while only 5 percent were unemployed from 17 to 20 weeks.

Therefore, as the duration of benefits is increased, each additional week added will require a proportionately smaller addition to the rate of contributions necessary to finance the benefits.

As a result, an additional 1- or 2-percent contribution will make possible an extension of benefits to a duration that will more adequately protect the unemployed against long periods of unemployment. The estimated effect of a higher rate of contributions on the maximum duration of benefits that the District of Columbia can pay—with other variable factors—is shown later in table VII.

EFFECT OF THE WAITING PERIOD ON DURATION OF BENEFITS

As previously stated, the cost of compensating the earlier weeks of unemployment is greater than compensating the later weeks. It follows, therefore, that the length of the waiting period has a considerable effect upon the duration for which benefits can be paid. According to actuarial estimates for the United States as a whole, a change of 1 week either way from a 3-week waiting period would result in a corresponding change of from 1 to 5 weeks in the length of benefits permissible.

The estimated effect of different lengths of waiting period on the maximum duration of benefits that can be paid in the District of Columbia—with other variable factors—is given in table VII.

TABLE VII.—*Estimated maximum number of weeks of benefit possible in the District of Columbia*

[Based on the standards of the District of Columbia unemployment-insurance bill]

Rate of contribution	Waiting period (in weeks)	Estimated maximum duration of benefits
3 percent	2	14
Do	3	16
Do	4	17
4 percent	2	21
Do	3	24
Do	4	27
5 percent	2	35
Do	3	40
Do	4	43

This bill has been carefully considered and we believe is well constructed. We hope that it will exercise a profound influence upon the type and character of unemployment compensation laws which will be passed in the States. The fact that this bill will be passed by the Congress—a National Legislature which has Representatives from every part of the United States—should give to the bill a unique position among the State unemployment compensation laws.

We hope that this bill will be passed by the Congress in substantially the same form in which it now is and that it will serve as a model to every State of the Union. For sincerely we believe that its passage in this liberal form will bring honor and distinction to the Congress of the United States.

The SPEAKER. The Clerk will report the bill.

The Clerk read the bill as follows:

Be it enacted, etc.,

SHORT TITLE

SECTION 1. This act shall be known and may be cited as the "District of Columbia Unemployment Compensation Law."

DECLARATION OF PUBLIC POLICY OF THE DISTRICT

SEC. 2. As a guide to the interpretation and application of this act, the public policy of the District of Columbia is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of the District of Columbia. Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the Congress to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus limiting the serious social consequences of poor relief assistance. The Congress, therefore, declares that in its considered judgment, the public good, and the general welfare of the employees in the District of Columbia, require the enactment of this measure for the compulsory payment of contributions as unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

DEFINITIONS

SEC. 3. The following words and phrases, as used in this act, shall have the following meanings unless the context clearly requires otherwise:

(1) "Benefit" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this act.

(2) "Board" means the Social Security Board established by act of Congress or its authorized representative.

(3) "Contributions" means the money payments to the District of Columbia Unemployment Compensation Account required by this act.

(4) "District" means the District of Columbia.

(5) "Eligibility." An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment, occurring subsequent to any required waiting period, only when he is not disqualified by any provision of this act from receiving benefits for such week of unemployment.

(6) "Employee" means any person employed by an employer subject to this act and in employment subject to this act.

(7) "Employer" means any person, partnership, association, joint-stock company, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, including the District, but excluding the Federal Government and Members of Congress, who or whose agent or predecessor in interest has employed at least four persons in employment subject to this act within each of 13 or more calendar weeks in the year 1935 or any subsequent calendar year: *Provided*, That such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January 1, of the calendar year in which such employment occurs. In determining whether an employer of any person within the District employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in the absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general Board rules. All persons thus employed by an employer of any person within the District, in all of his several places of employment maintained within the District, shall be treated as employed by a single "employer" for the purposes of this Act: *Provided, however*, That where any person, partnership, association, joint-stock company, corporation, whether domestic or foreign, or the

legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons within the District, all such enterprises shall be treated as a single "employer" for the purposes of this act. Any employer subject to this act shall cease to be subject hereto only upon a written application by him and after a finding by the Board that he has not within any calendar week within the last completed calendar year employed four or more persons in employment subject hereto. Any employer of any person within the District not otherwise subject to this act shall become fully subject hereto, upon filing by such employer with the Board of his election to become fully subject hereto for not less than 3 calendar years, subject to written approval of such election by the Board.

(8) "Employment" means any employment in which all or the greater part of the person's work within the United States and its territories and possessions is or was customarily performed within the District, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person eemployed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment within the United States and its territories and possessions. In the case of all other persons employed partly in the District and partly in the United States or its territories and possessions the term "employment" shall include the employment of such persons to the extent prescribed by general rules adopted by the Board. Except as provided in any reciprocal benefit arrangement made pursuant to this act, employment shall include employment in interstate commerce until such employment is included in another unemployment compensation system established by an act of Congress.

Nor shall the term "employment" apply to—

(a) Employment as an elected or appointed public officer;

(b) Employment by the District on an annual salary basis;

(c) Employment as a teacher in a public school.

(9) "Employment office" means such free public employment office or branch thereof in the District, operated by the United States Employment Service, as may be designated by the Board.

(10) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(a) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least 100 hours of employment by his most recent employers.

(b) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee under law or the applicable code of fair competition. Where there is no code or law applicable, the Board shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks in at least the past 3 months in which he worked 30 hours or more, or by such equitable method as the Board may by general rule prescribe for determining a full-time standard of not less than 30 weekly hours for benefit purposes. In the case of any employee who is found by the Board, at the time he becomes eligible for benefits, to have worked regularly half or less than half the full-time weekly hours which prevail in such establishment for full-time employees, the Board shall determine his full-time weekly hours for benefit purposes by averaging his weekly hours for all weeks in at least the past 3 months in which he worked.

(11) "Account" means the District of Columbia unemployment compensation account established by this act, to which all contributions and from which all benefits required under this act shall be paid.

(12) "Partial unemployment." An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages and/or any other pay for personal services, including net earnings from self-employment for such week at least $2 more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(13) "Pay roll" means the total amount of all wages received by or due to the employees of an employer, commencing with wages payable for employment occurring after the employer becomes newly subject to this act.

(14) "Total unemployment." An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages and no other pay for personal services, including net earnings from self-employment, and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(15) "Unemployment administration account" means the District of Columbia unemployment compensation administration account established by this act.

(16) "Wages" means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages. Whenever gratuities are received by the employee in the course of his employment from a person other than his employer, the customary value of such gratuities shall be determined by the Board and be deemed and included as part of his wages received from his employer.

(17) "Waiting-period unit" means a period for which no benefits are payable but during which the employee is in all other respects eligible, consisting of either 1 week of total unemployment or 2 weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this act.

(18) "Week" means calendar week.

(19) "Week of employment" means each calendar week, occurring after contributions first become generally due under this act, within which the person in question performed any employment subject to this act for any employer subject to this act: *Provided, however,* That any week occurring within the customary school vacation periods in which an employer employed an employee who attended a school, college, or university in the last preceding school term, and returns to school, college, or university at the end of such vacation period shall not be counted as a "week of employment" in determining the benefit rights of such employee under this act.

(20) "Dependent relative" means a child under 16 years of age, a mother or stepmother, a father or stepfather, a brother or sister who, because of age or physical disability, is unable to work and is wholly or mainly supported by the employee.

UNEMPLOYMENT COMPENSATION ACCOUNT

SEC. 4. (1) Accounts: There is hereby created the District of Columbia unemployment compensation account in the Treasury of the United States.

(2) Deposit: All contributions paid under this act shall, upon collection, be credited to the account and deposited in the unemployment trust fund created by the Social Security Act. The Secretary of the Treasury shall from time to time cause to be transferred from the unemployment trust fund to the account such amounts as are necessary for the payment of benefits.

(3) Method of paying benefits: The Board shall from time to time certify to the Secretary of the Treasury the name and address of each person entitled to receive a payment of benefits under this act, the amount of such payment, the time, and public employment office or branch thereof at which it should be made, and the Secretary of the Treasury through the Division of Disbursement of the Treasury Department, and prior to audit and settlement by the General Accounting Office, shall make payment in accordance with the certification by the Board.

CONTRIBUTIONS

SEC. 5. (1) Payments: On and after the 1st day of January 1936, contributions shall accrue and become payable by each employer then subject to this act and by the District. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer except the District to the Treasury of the United States in such manner and at such times as the Secretary of the Treasury may prescribe. The contributions of the District shall be transferred from time to time from the funds of the District appropriated for this purpose and placed to the credit of the account.

(2) Rate of contributions: The contributions regularly payable by each employer shall be an amount equal to 3 percent of his pay roll, except as provided in subsection (3).

(3) Future rates, based on benefit experience: Based on the actual contribution and benefit experience of employers under this act, the Board shall, for the year 1940 and in each calendar year thereafter, classify employers in accordance with said experience, and shall determine for each employer the rate of contributions which shall apply to him throughout the calendar year, pursuant to said experience and classification. The contributions thus payable to the fund shall in no case amount to less than 1½ percent nor more than 5 percent on the employer's pay roll, and the average contribution rate of all employers shall be approximately 3 percent of all pay rolls for any calendar year. An employer's contribution rate shall in no case be reduced or increased until there have been at least 3 calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The Board shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply such form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption, and publication in the manner prescribed in this act for all general Board rules.

(4) Contribution by District of Columbia: The District of Columbia shall regularly contribute, in addition to its contribution as an employer, an amount equal to 1 percent of the pay roll of all employers subject to this act.

BENEFITS

SEC. 6. (1) Payment of benefits: (a) After contributions have been due under this act for 1 year benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the Board may prescribe.

(b) Section 1003 (a) (2) of the Social Security Act is hereby amended to read as follows:

"(1) The first period with respect to which compensation may be payable shall begin, except in the District of Columbia, exactly 2 years after the first day of the first period with respect to which contributions are required."

(2) Weekly benefits for total unemployment: An employee totally unemployed and eligible in any week shall be paid benefits, computed to the nearest half-dollar, at the following rate: 40 percent of his full-time weekly wage, an additional 10 percent if he has a dependent spouse, and an additional 5 percent for each dependent relative who is a member of his household; but in no case shall his total benefits exceed $15 per week or 65 percent of his full-time weekly wage, whichever is the lower.

(3) Weekly benefits for partial unemployment: An employee partially unemployed and eligible in any week shall be paid sufficent benefits so that his week's wages and/or any other pay for personal services, including net earnings from self-employment and his benefits combined will be $2 more than the weekly benefit to which he would be entitled if totally unemployed in that week.

(4) One-to-four ratio of benefits to employment: The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his earliest weeks of employment in the 156 weeks preceding the close of his most recent week of employment. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general Board rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 156 weeks preceding the close of the employee's most recent week of employment.

(5) Maximum weeks of benefit in any year: Benefits shall be paid each employee for the weeks during which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment as provided in subsection (4) and (6); but not more than 26 weeks of total unemployment benefits (or an equivalent total amount, as determined by Board rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any 52 consecutive weeks, except as provided in subsection (6).

(6) Additional benefits (1-to-20 ratio): An eligible employee who has received the maximum benefits permitted under subsection (5) shall receive additional benefits in the ratio of 1 week of total unemployment benefit (or its equivalent) to each unit of 20 aggregate weeks of employment occurring within the 312 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's most recent weeks of employment available for this purpose.

BENEFIT ELIGIBILITY CONDITIONS

SEC. 7. (1) Employment requirement: An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has accumulated 17 weeks of employment subject hereto within the 52 weeks immediately preceding the close of his most recent week of employment.

(2) Availability and registration for work: An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall file claim for benefits at the employment office, and shall register for work within such time limits and with such frequency and in such manner (in person or in writing) as the Board may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A sufficient number of copies of the Board's rules covering such requirements shall be furnished by it to each employer, who shall post a copy of the same on the premises in a conspicuous and easily accessible place and who shall furnish a copy to each employee, when he becomes unemployed.

(3) Waiting period: Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a "waiting period" of three waiting-period units; such waiting-period units need not be continuous, but may be accumulated over the 52 weeks preceding the close of the employee's most recent week of employment.

There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under this section.

(4) During trade disputes: An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a strike or jurisdictional labor dispute still in active progress in the establishment in which he is or was last employed.

(5) Voluntary leaving: An employee who has left his employment voluntarily without good cause shall be ineligible for benefits for the week in which such leaving occurred and for not exceeding the 3 next following weeks in the discretion of the Board; such weeks shall be charged, as if benefits for total unemployment had been paid therefor, against the employee's earliest weeks of employment against which benefits have not previously been charged hereunder.

(6) Discharge for misconduct: An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the 1 nor more than the 6 next following weeks, in the discretion of the Board; the ineligible weeks thus determined shall be charged, as if benefits for total unemployment had been paid therefor, against the employee's earliest weeks of employment against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

(7) Refusal of suitable employment: If an otherwise eligible employee fails, without good cause, either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks; such weeks shall be charged, as if benefits for total unemployment had been paid therefor, against the employee's weeks of employment against which benefits have not previously been charged hereunder, and shall also be counted against his maximum weeks of benefit per year: *Provided, however,* That the period thus charged shall not exceed the period of actual unemployment.

"Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety, or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, and other conditions of the work offered are less favorable to the employee than those prevailing for similar work in the locality; (c) if acceptance of such employment would either require the employee to join a company union or resign from or refrain from joining any bona fide labor organization.

(8) Vocational education: An otherwise eligible employee, under 21 years of age, shall be ineligible for benefits in any week in which he fails without good cause to attend courses at a vocational or other school when it is so recommended by the manager of the employment office or the board and such courses are available at public expense. Any such week shall be charged, as if benefits had been paid therefor, against the employee's earliest weeks of employment against which benefits have not been charged hereunder, and shall also be counted against his maximum weeks of benefit per year.

SETTLEMENT OF BENEFIT CLAIMS

SEC. 8. (1) Filing: Benefit claims shall be filed at the employment office, pursuant to general Board rules.

(2) Initial determination: A deputy designated by the Board shall promptly determine whether or not the claim is valid and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within 10 calendar days after such notification was delivered to him or was mailed to him at his last known address.

(3) Appeals: Unless such request for a hearing is withdrawn, the claim thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard by such appeal tribunal as the Board may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the Board except in cases where the Board acts on its own motion, or, pursuant to general rules, initiates further appeal or review.

(4) Appeal tribunals: To hear and decide disputed claims the Board shall establish one or more appeal tribunals, consisting in each case of one full-time salaried examiner or Board member, who shall serve as chairman, and of two other members appointed by the Board, namely, an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than $10 per day of active service on such tribunal and shall serve until replaced by the Board, except that no person shall hear any case in which he is an interested party. With the written consent of both parties, the chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(5) Procedure: The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general Board rules, without regard to common law or statutory rules of evidence and other technical rules of procedure, for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(6) Board review: The Board shall have the power to transfer for hearing by the Board the proceedings on any claim pending before a deputy, appeal tribunal, or Board member; and may on its own motion, within 10 days after the date of any decision by a deputy, appeal tribunal, Board member, or by the Board as a body, affirm, reverse, change, or set aside any such decision on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(7) Appeal to courts: Except as thus provided, any decision shall, unless appealed pursuant to general Board rules, 10 days after the date of such decision, become the final decision of the Board, and all findings of fact made therein shall, in the absence of fraud, be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the party plaintiff has used and exhausted the remedies provided hereunder and has commenced action for judicial review within 30 days after notice of the final decision; notice of such action for judicial review shall be served upon the Board by the party taking such action.

(8) Oaths and witnesses: In the discharge of their duties under this section, any deputy, any member of an appeal tribunal, and any examiner, Board member, or duly authorized representative of the Board shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpenas (served in the manner in which subpenas of the Supreme Court of the District of Columbia are served) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general Board rules, from the unemployment administration fund.

COURT REVIEW

SEC. 9. Within 30 days after notice of a final decision, the employee or any other party affected may appeal questions of law involved in such decision to the Supreme Court of the District of Columbia. The Board may also, in its discretion, certify to such court questions of law involved in its decisions. Such appeals and the questions so certified shall be heard at the earliest possible date and shall have precedence over all other civil cases in such court except cases arising under the workmen's compensation law. An appeal may be taken from the decision of such court to the Court of Appeals of the District of Columbia in the same manner as is provided for other civil cases. It shall not be necessary to enter exceptions to the rulings of the Board, and no bond shall be required for entering an appeal. Upon final determination of an appeal the Board shall enter an order in accordance with such determination: *Provided, however,* That no appeal shall act as a supersedeas.

ADMINISTRATION

SEC. 10. (1) Duties and powers of Board: It shall be the duty of the Board to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action, within its means and consistent with the provisions of this act, necessary or suitable to that end. Annually, not later than the 1st day of February, the Board shall submit to the Congress and the Commissioners of the District of Columbia a report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the Board deems proper. Whenever the Board believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once make its recommendations to the Congress, if in session.

(2) General Board rules: General rules for the administration of this act shall be adopted by the Board after deliberation with the District Unemployment Insurance Commission (hereinafter created). Such general Board rules shall, upon adoption by a majority of the Board, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, altered, or repealed in the same manner as herein provided for their adoption.

(3) Publication: The Board may cause to be printed for distribution to the public this act, the Board's general rules, and its annual report.

(4) Personnel: The Board shall select, from lists submitted by the District Unemployment Insurance Commission (hereinafter created), a director to administer this act. The Board is authorized to appoint such officers, accountants, attorneys, experts, and other persons as are necessary for the administration of this act, and fix their salaries. The Board shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a Member of the Board. The Board may, in its discretion, require bond from any of its employees.

(5) District Unemployment Insurance Commission: The Commissioners of the District shall appoint a commission of 3 members to be known as the "District Unemployment Insurance Commission", composed of 1 representative of the employers of the District, 1 representative of the employees of the District, and 1 representative of the District, who shall serve as the chairman. The members of the commission shall be residents of the District. The term of the members of the commission shall be for 1, 2, and 3 years, respectively, from the date of their appointment, and they shall serve until their successors are appointed. Thereafter their successors shall be appointed for a term of 3 years. The commission shall be provided by the Board with the necessary clerical and stenographic assistance. Such commission shall assist the Board in selecting a director to administer this act, in drafting rules for the administration of this act, and in formulating policies relating to its administration. It shall have authority to recommend to the Board such changes in the act as it deems necessary or desirable, which recommendations shall be transmitted by the Board to the Congress in the annual report to be filed by the Board. Each member of the commission shall be paid at the rate of $10 per day for each day of service.

(6) Employment stabilization: It shall be one of the purposes of this act to promote the regularization of employment in the District. The Board, with the advice and aid of the District Unemployment Insurance Commission, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by the District, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the District in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies.

(7) Records and reports: Every person employing one or more persons in the District shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the Board or its authorized representatives at any reasonable time and as often as may reasonably be necessary. The Board may require from any such person employing one or more persons in the District any reports covering persons employed by him, on employment, wages, hours, unemployment, and related matters, which the Board deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any Board employee guilty of violating this provision shall be subject to the penalties provided in this act.

(8) Representation in court: On request of the Board the United States District Attorney shall represent the Board in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Board.

RECIPROCAL BENEFIT ARRANGEMENTS WITH THE STATES

SEC. 11. The Board is hereby authorized to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment-compensation system established by any State law or by an act of Congress, as to persons who have, after acquiring rights to benefits under this act, come under such other system or after acquiring rights to benefits under such other system come under this act, whereby liability to pay benefits (or substantially equivalent benefits) shall be assumed by the fund of the unemployment-compensation system last applicable to such person. Such reciprocal arrangements shall be adopted and published by the Board in the same manner as its general rules.

PROTECTION OF RIGHTS AND BENEFITS

SEC. 12. (1) Waiver of rights void: No agreement by an employee to waive his right to benefit or any other right under this act shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make, permit, or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any right hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this act for deciding benefit claims; and the Board shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(2) Limitation of fees: No employee shall be charged fees of any kind by the Board or its representatives, in any proceeding under this act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than 10 percent of the maximum benefits at issue in such proceeding or court action.

(3) No assignment or garnishment of benefits: No assignment of any benefits which are or may become due or payable under this act shall be legal or enforceable. Benefits when awarded, adjudged, or paid shall be exempt from all claims of creditors, and from levy, execution, and attachment or other remedy now or hereafter provided for the recovery or collection of debt. This exemption may not be waived.

COLLECTION OF CONTRIBUTIONS

SEC. 13. (1) Interest on tardy payments: If any employer fails to make promptly, by the date it becomes due hereunder, any payment required to be made by him under this act, he shall pay to the account interest on such payment at the rate of 1 percent per month from the date such payment became due until paid, pursuant to general Board rules.

(2) Bankruptcy: In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefit of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have priority over all other claims, except taxes due the United States and wage claims due for the last 6 months not exceeding, however, $250 for any individual employee.

(3) Court action: Upon complaint of the Board the United States district attorney shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder and shall institute and prosecute such criminal action, as is authorized by this or any other act.

PENALTIES

SEC. 14. (1) Whoever willfully makes a false statement or representation to obtain or increase any benefit or other payment under this act, either for himself or for any other person, shall upon conviction be punished by a fine of not less than $20 nor more than $100 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each such false statement or representation shall constitute a separate and distinct offense.

(2) Any employer of any person within the District or his agent, who willfully makes a false statement or representation to avoid becoming or remaining subject to this act or to avoid or reduce any contribution or other payment required of such employer under this act, or to deny or reduce payments of benefits to any employee, or who willfully refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as lawfully required hereunder, or who makes, permits, or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who attempts to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not longer than 6 months, or by both such fine and imprisonment; and each such false statement or misrepresentation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense. If the employer in question is a corporation, the president, the secretary, and the treasurer, or officers exercising corresponding functions, shall, in addition to the corporation, each be subject to the aforesaid penalties.

(3) Any violation of any provision of this act, for which a penalty is neither prescribed in this act nor provided by any other applicable statute, shall be punished by a fine of not less than $20 nor more than $200 or by imprisonment for not longer than 90 days, or by both such fine and imprisonment.

(4) On complaint of the Board the fines specified or provided in this section may be collected in an action for debt. All fines thus collected shall be paid to the account.

UNEMPLOYMENT ADMINISTRATION ACCOUNT

SEC. 15. (1) Administration account: There is hereby created the District of Columbia unemployment compensation administration account in the Treasury of the United States to consist of all moneys received or allocated by the Board for the administration of this act. This administration account shall be expended solely for the purposes herein specified, and its unexpended balances shall not lapse at any time but shall remain continuously available to the Board for expenditure consistent herewith.

APPROPRIATIONS

SEC. 16. There is hereby authorized to be appropriated to the District of Columbia unemployment compensation account from the funds of the District of Columbia not otherwise appropriated for the fiscal year ending June 30, 1936, the sum of $750,000, or so much thereof as is necessary, for the contribution of the District of Columbia to said account, as provided in this act; and annually thereafter the commissioners of the District of Columbia shall include in the estimate of appropriations for said District of Columbia such amount as may be necessary for the payment of the contributions of the District of Columbia to said fund.

SAVING CLAUSE

SEC. 17. All the rights, privileges, or immunities conferred by this act and/or by acts done pursuant hereto shall exist subject to the power of the Congress to amend or repeal this act at any time.

SEPARABILITY OF PROVISIONS

SEC. 18. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 19. This act shall take effect upon passage.

With the following committee amendments:

Page 3, line 21, after the word "Government", insert "and Members of Congress."

Page 6, line 8, after the word "board", strike out "except as provided in any reciprocal benefit arrangement made pursuant to this act, employment" and insert "employment."

Page 6, line 14, strike out "nor shall the term 'employment' apply to" and insert "The term 'employment' shall not apply to——"

Page 7, line 22, after the word "the", strike out "full time" and in line 23, strike out "full-time employees" and insert "the majority of the employees in the particular division or department."

Page 8, line 2, strike out the word "full time."

Page 10, line 12, after the word "act", strike out the period, insert a colon and the words "*And provided further*, That the weeks during which benefits are paid shall not be counted."

Page 12, line 18, after the word "than", strike out "1½" and insert "3"; and in line 19, after the word "roll", strike out the comma and the words, "and the average contribution rate of all employers shall be approximately 3 percent of all pay rolls for any calendar year."

Line 23, after the word "be", strike out the words "reduced or."

Page 13, after line 17, insert:

"(5) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent."

Page 14, lines 5 and 6, strike out "(b) Section 1003 (a) (2) of the Social Security Act is hereby amended to read as follows", and insert:

"(b) Section 903 (a) (2) of the Social Security Act (H. R. 7260) is hereby amended by striking out at the end thereof the semicolon and inserting in lieu thereof 'except in the District of Columbia.'"

Page 14, strike all of lines 11, 12, 13, 14, and 15.

Page 15, line 5, strike out the word "earings" and insert "earnings."

Page 16, line 25, strike out "17" and insert "13."

Page 19, line 19, after the word "unemployment" insert "subsequent to such failure to accept suitable employment."

Page 21, line 15, after the word "where", insert "either party appeals to", and in line 16, strike out the word "act" and insert "or the Board."

Page 28, at the bottom of the page insert:

"(8) Upon request the Board shall make available to any agency of the United States or of the District of Columbia, charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of unemployment compensation under this act."

Page 29, line 5, strike out "(8)" and insert "(9)".

Page 32, line 2, correct the spelling of the word "wilfully".

Page 32, line 11, strike out "willfully" and insert "wilfully furnishes a false record".

The amendments were severally reported and severally agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider laid on the table.

MILITARY INSTRUCTOR FOR HIGH-SCHOOL CADETS, WASHINGTON, D. C.

Mrs. NORTON. Mr. Speaker, I call up the bill (S. 1023) to provide for the payment of a military instructor for the high-school cadets of Washington, D. C., and ask unanimous consent that the same be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the lady from New Jersey?

There being no objection, the Clerk read as follows:

Be it enacted, etc., That, notwithstanding any other provisions of law, one retired officer of the United States Army, acting as professor of military science and tactics at the public high schools of Washington, D. C., shall be permitted to receive, in addition to his retired pay, the pay of a teacher in the public high schools of Washington, D. C., not to exceed $1,800 per annum, under appointment by the Board of Education of the District of Columbia and payable from the appropriation for the expenses of the public schools of the District of Columbia.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MAINE AVENUE

Mrs. NORTON. Mr. Speaker, I call up House Joint Resolution 280, for the designation of a street or avenue in the Mall to be known as "Maine Avenue."

The Clerk read the House joint resolution, as follows:

Joint resolution for the designation of a street or avenue in the Mall to be known as "Maine Avenue"

Whereas in that portion of the "Mall", so-called, in the city of Washington, D. C., constituting the approach to the Capitol as it is now being developed, there has long been located Maine Avenue, named in honor of the State of Maine; and

Whereas in the creation of said Mall carrying out the plans of the Federal Government for the improvement of the National Capital the avenue heretofore known as "Maine Avenue" is being eliminated and discontinued; and

Whereas a new avenue is being created running practically parallel to the former Maine Avenue and located at a short distance from the long-known Maine Avenue, being at one of the termini coincident and being the southerly of the two center avenues in the said proposed Mall development; and

Whereas the people of the State of Maine respectfully pray that the name of their State be perpetuated among the other States so honored in the National Capital: Now, therefore, be it

Resolved, etc., That in honor of the State of Maine the southerly of the two center avenues extending east and west in the Mall between Third Street and Fourteenth Street and south of the National Museum and north of the Smithsonian Institution in the National Capital, the city of Washington, D. C., shall be known as "Maine Avenue."

Mr. SHORT. Mr. Speaker, will the lady yield?

Mrs. NORTON. I yield.

Mr. SHORT. I would like to ask the lady from New Jersey a question. I would like to ask why a similar resolution introduced by myself to name the northern avenue "Missouri Avenue" is not on the calendar today? As I understand from my colleagues the two resolutions were reported out of the committee at the same time.

Mrs. NORTON. My understanding is the report has not been submitted with regard to Missouri Avenue, and just as soon as it is reported we shall be very glad to report it favorably.

Mr. SHORT. The resolution was voted out, was it?

Mrs. NORTON. It was.

The House joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

REPORT FROM COMMITTEE ON WAYS AND MEANS

Mr. CULLEN. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight tonight to file a committee report.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

NATIONAL ENCAMPMENT, GRAND ARMY OF THE REPUBLIC

Mrs. NORTON. Mr. Speaker, I call up House Joint Resolution 201, giving authority to the Commissioners of the District of Columbia to make special regulations for the occasion of the Seventieth National Encampment of the Grand Army of the Republic, to be held in the District of Columbia in the month of September 1936, and for other purposes, incident to said encampment; and I ask unanimous consent that the same be considered in the House as in Committee of the Whole.

The Clerk read the title of the resolution.

The SPEAKER. Is there objection to the request of the lady from New Jersey?

There was no objection.

The Clerk read the House resolution, as follows:

[H. J. Res. 201, 74th Cong., 1st sess.]

Joint resolution giving authority to the Commissioners of the District of Columbia to make special regulations for the occasion of the Seventieth National Encampment of the Grand Army of the Republic, to be held in the District of Columbia in the month of September 1936, and for other purposes, incident to said encampment

Whereas at the close of the Civil War the Grand Army of the Republic marched up historic Pennsylvania Avenue while the spirited tramp, tramp, tramp of their feet became the Nation's marching song, and again in 1915, when their ranks were beginning to thin, the Capital City once more welcomed the Boys in Blue as their footsteps again resounded to the old battle tunes; and

Whereas the ranks of the 300,000 have dwindled away to hundreds, most of whom are in their ninetieth year; and

Whereas it is the greatest desire of their hearts to hold their seventieth national encampment in the Capital of their country in 1936, and march, for the last time, up Pennsylvania Avenue; and it should be our pleasure and privilege to invite them here and show respect to the last of our Civil War veterans, who, as our President in his last message to them said, "have lived to see the end of sectionalism and the final healing of the scars of conflict and the achievement of a true unity of national purposes": Therefore be it

Resolved, etc., That the Commissioners of the District of Columbia are hereby authorized and directed to make such special regulations for the occasion of the encampment of the Grand Army of the Republic, which will take place in the District of Columbia from September 21 to September 27, 1936, as they shall deem advisable for the preservation of public order and the protection of life and property, to be in force 1 week prior to said encampment, during said encampment, and 1 week subsequent thereto. Such special regulations shall be published in one or more of the daily newspapers of the District of Columbia, and no penalty prescribed for the violation of such regulations shall be enforced until 5 days after such publication; and said Commissioners are authorized and directed to establish a special schedule of fares, applicable to public conveyances in said District, during the period aforesaid. Any person violating any of the aforesaid regulations or the aforesaid schedule of fares shall, upon conviction thereof in the police court of the said District, be liable for such offense to a fine not to exceed $100, and in default of payment of such fine to imprisonment in the workhouse (or jail) of said District for not longer than 60 days. This resolution shall take effect immediately upon its approval, and the sum of $11,000, or as much thereof as may be necessary, payable from any money in the Treasury not otherwise appropriated and from the revenues of the District of Columbia, in equal parts, is hereby appropriated to enable the Commissioners of the District of Columbia to carry out the provisions of section 1 of this joint resolution, $1,000 of which shall be available for the construction, maintenance, and operation of public comfort stations and information booths, under the direction of said Commissioners.

SEC. 2. That the Commissioners of the District of Columbia are hereby authorized to permit the committee on illumination of the citizens' executive committee for the entertainment of the seventieth national encampment of the Grand Army of the Republic to stretch suitable conductors, with sufficient supports wherever necessary, for the purpose of effecting the said illumination within the District of Columbia: *Provided*, That the said conductors shall not be used for the conveying of electrical currents after September 27, 1936, and shall, with their supports, be fully and entirely removed from the streets and avenues of the said city of Washington on or before the 16th of October 1936: *Provided further*, That the stretching and removing of the said wires shall be under the supervision of the Commissioners of the District of Columbia, who shall see that the provisions of this resolution are enforced; that all needful precautions are taken for the protection of the public; and that the pavement of any street, avenue, or alley disturbed is replaced in as good condition as before entering upon the work herein authorized: *Provided further*, That no expense or damage on account of or due to stretching, operation, or removing of the said temporary overhead conductors shall be incurred by the United States or the District of Columbia: *And provided further*, That if it shall be necessary to erect wires for illumination purposes over any park or reservation in the District of Columbia that the work of erection and removal of said wires shall be under the supervision of the official in charge of said park or reservation.

SEC. 3. That the Secretary of War and the Secretary of the Navy be, and they are hereby, authorized to loan to the chairman of the subcommittee in charge of street decorations, or his successor in said office, for the purpose of decorating the streets of the city of Washington, District of Columbia, on the occasion of the encampment of the Grand Army of the Republic, 1936, such of the United States ensigns, flags (except battle flags), signal numbers, and so forth, belonging to the Government of the United States, as in their judgment may be spared and are not in use by the Government at the time of the encampment. The loan of the said ensigns, flags, signal numbers, etc., to said chairman shall not take place prior to the 11th day of September and shall be returned by him by the 16th of October 1936.

SEC. 4. That for the protection and return of said ensigns, flags, signal numbers, etc., the said chairman, or his successor in office, shall execute and deliver to the President of the United States, or to such officer as he may designate, a satisfactory bond in the penalty of $50,000, to secure just payment for any loss or damage to said ensigns, flags, and signal numbers not necessarily incident to the use specified.

SEC. 5. That the Director of Public Buildings and Public Parks of the District of Columbia is hereby authorized to grant permits to the citizens' executive committee for the entertainment of the Grand Army of the Republic for the use of any reservation or other public spaces in the city of Washington on the occasion of the seventieth national encampment, in the month of September 1936, which, in his opinion, will inflict no serious or permanent injuries upon such reservations or public spaces, or statuary therein; and the Commissioners of the District of Columbia may designate for such and other purposes on the occasion aforesaid such streets, avenues, and sidewalks in said city of Washington as they may deem proper and necessary: *Provided, however*, That all stands and platforms that may be erected on the public spaces aforesaid shall be under the supervision of the said citizens' executive committee and in accordance with plans and designs to be approved by the Architect of the Capitol, the Commissioner of Public Buildings and Grounds, and the building inspector of the District of Columbia.

SEC. 6. That the Secretary of War is hereby authorized to loan to the chairman of the medical department of the seventieth national encampment of the Grand Army of the Republic, or his successor in said office, for the purpose of caring for the sick, injured, and infirm on the occasion of the encampment of the Grand Army of the Republic in the month of September 1936, such hospital tents and camp appliances and other necessaries, hospital furniture, and utensils of all descriptions, ambulances, drivers, stretchers, attendants, and Red Cross flags and poles belonging to the Government of the United States as in his judgment may be spared and are not in use by the Government at the time of the encampment: *Provided*, That the said chairman, or his successor in said office, shall indemnify the War Department for any loss to such hospital tents and appliances as aforesaid not necessarily incident to such use.

With the following committee amendments:

On page 2, line 15, after the word "publication", strike out the semicolon and "and said Commissioners are authorized and directed to establish a special schedule of fares, applicable to public conveyances in said District, during the aforesaid"; page 3, line 8, strike out "$11,000" and insert in lieu thereof "$15,000"; Page 5, line 19, strike out the words "Director of Public Buildings and Public Parks of the District of Columbia" and insert in lieu thereof "Superintendent of National Capital Parks, subject to the approval of the Director of National Park Service."

Page 7, line 7, insert a new section, as follows:

"SEC. 7. The Public Utilities Commission of the District of Columbia is authorized and directed to establish a special schedule

of fares, applicable to public conveyances in said District, during the period aforesaid."

The committee amendments were agreed to.

The resolution as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RESIDENCE OF MEMBERS OF FIRE DEPARTMENT

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 3641) to amend section 559 of the Code of the District of Columbia, as to restriction on residence of members of the fire department; and I ask unanimous consent that the same be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the lady from New Jersey?

There being no objection, the Clerk read as follows:

A bill to amend section 559 of the Code of the District of Columbia as to restriction on residence of members of the fire department

Be it enacted, etc., That section 559 of the Code of the District of Columbia be amended to read as follows:

"Restrictions of members of department leaving District; leaves of absence: No member of the fire department shall, unless on leave of absence, go beyond the confines of the District of Columbia, or be absent from duty without permission, except that nothing in this act shall be construed to limit the right of members of the department to reside anywhere within the Washington, D. C., metropolitan district; and leaves of absence exceeding 20 days in any 1 year shall be without pay and require the consent of the Commissioners, and such year shall be from January 1 to December 31, both inclusive, and 30 days shall be the term of total sick leave in any year without disallowance of pay; and leave of absence with pay of members of the fire department of the District of Columbia may be extended in cases of illness or injury incurred in line of duty, upon recommendation of the board of surgeons approved by the Commissioners of the District of Columbia, for such period exceeding 30 days in any calendar year as in the judgment of the Commissioners may be necessary."

With the following committee amendment:

On page 2, after line 15, insert the following: "*Provided*, That for the purposes of this act, Washington, D. C., metropolitan district, shall be held to include the District of Columbia and the territory adjacent thereto within a radius of 12 miles from the United States Capitol Building: *And provided further*, That any member of the fire department living outside the District of Columbia shall have and maintain a telephone at all times in his residence."

The committee amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RESIDENCE OF MEMBERS OF POLICE DEPARTMENT

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 3642) to amend section 483 of the Code of the District of Columbia as to residence of members of the police department.

The Clerk read the bill, as follows:

Be it enacted, etc., That section 483 of the Code of the District of Columbia be amended to read as follows:

"Residence of members of police force: There shall be no limitation of restriction of place of residence to any member of the police force, other than residence within the Washington, D. C., metropolitan district."

With the following committee amendment:

Page 1, line 9, after the word "district" insert: "*Provided*, That for the purposes of this act, Washington, D. C., metropolitan district, shall be held to include the District of Columbia and the territory adjacent thereto within a radius of 12 miles from the United States Capitol Building: *And provided further*, That any member of the police department living outside of the District of Columbia shall have and maintain a telephone at all times in his residence."

The committee amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ALCOHOLIC BEVERAGE CONTROL ACT

Mrs. NORTON. Mr. Speaker, I call up the bill (H. R. 6510) to amend the District of Columbia Alcoholic Beverage Control Act; and I ask unanimous consent that the same be considered in the House as in Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the lady from New Jersey?

There was no objection.

The Clerk read as follows:

A bill to amend the District of Columbia Alcoholic Beverage Control Act

Be it enacted, etc., That subsection (c) of section 3 of the act of Congress entitled "An act to control the manufacture, transportation, possession, and sale of alcoholic beverages in the District of Columbia", approved January 24, 1934, be amended by adding at the end thereof the following sentence: "The word 'champagne' means any effervescent wine."

SEC. 2. That subsection (q) of section 3 of said act be amended so as to read as follows:

"(q) The word 'tavern' means a suitable space in a suitable building approved by the Board, including such suitable space outside of the building and adjoining it, as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where sandwiches or light lunches are prepared and served for consumption on the premises in such quantities as to satisfy the Board that the sale of beer and light wines intended is no more than an incident to and not the prime source of revenue of such 'tavern'."

SEC. 3. That section 6 of said act be amended so as to read as follows:

"The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this act shall be vested solely in the Board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than 30 days by the Board, the licensee may, within 10 days after the order of revocation, or the order of suspension for a period of more than 30 days is entered, appeal in writing to the Commissioners to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the discretion of the Commissioners, and the Commissioners shall not be required to take evidence, either oral, written, or documentary. The decision of the Commissioners on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal the license shall stand suspended unless the Commissioners shall otherwise order.

"That the right and power be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations, or associations, partnerships, executors, administrators, being owners thereof, to persons licensed under this act.

"Said Board shall have other authority and perform such other duties as the Commissioners may, by regulation, prescribe."

SEC. 4. That subsection (a) of section 11 of the said act be amended so as to read as follows:

"(a) Manufacturers' license, class A: To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this act for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this act. The annual fee for such license for a rectifying plant shall be $3,500; for a distillery shall be $3,500; and for a winery shall be $500: *Provided, however*, That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 percent of such alcohol is sold for beverage purposes, the annual fee shall be $1,000. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50 percent or more of said alcohol for beverage purposes, he shall pay to the collector of taxes the difference between the license fee paid and the license fee for a distiller of spirits."

SEC. 5. That subsection (b) of section 11 of said act be amended so as to read as follows:

"(b) Manufacturers' license, class B: To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this act for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be $2,500."

SEC. 6. That subsection (c) of section 11 of the said act be amended so as to read as follows:

"(c) Wholesalers' license, class A: Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this act for resale or to a

dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this act.

"No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and nonalcoholic beverages.

"The annual fee for such license shall be $1,500."

SEC. 7. That subsection (d) of section 11 of the said act be amended so as to read as follows:

"(d) Wholesalers' license, class B: Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder under this act for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold.

"The annual fee for such license shall be $750."

SEC. 8. That subsection (h) of section 11 of the said act be amended so as to read as follows:

"(h) Retailers' license, class D: Such a license shall be issued only for a bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least 3 months immediately prior to the making of the application for such license.

"The annual fee for such a license shall be $200; except that in the case of a marine vessel the fee shall be $20 per month or $200 per annum, and in the case of each railroad dining car or club car $1 per month or $10 per annum."

SEC. 9. That section 13 of the act be amended so as to read as follows:

"SEC. 13. Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license or the holder of a retailer's license, class C and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding 6 months."

SEC. 10. That section 17 of the act be amended so as to read as follows:

"If any licensee violates any of the provisions of this act or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or knowingly employs in the sale or distribution of beverages any person who has, within 5 years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within 10 years prior thereto, been convicted of any felony, or such licensee otherwise fails to carry out in good faith the provisions of this act, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than 30 days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of 1 year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

"That in the event the Board at any time shall order the suspension of any license a notice shall be posted by the Board in a conspicuous place on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of the District of Columbia Alcoholic Beverage Control Act, or of the Commissioners' regulations adopted under authority of said District of Columbia Alcoholic Beverage Control Act."

SEC. 11. That section 20 of the act be amended so as to read as follows:

"SEC. 20. Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of 21 years, or beer or light wines to any person under the age of 18 years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of any such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages."

SEC. 12. That section 23 of the said act be amended by the addition of a new subsection, to be designated (k) and to read as follows:

"(k) No taxing provision of subsections (a), (c), (e), and (i) of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this act, except as set forth in this subsection.

"The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this act, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the Board. Each holder of such a license shall, on or before the 10th day of each month, forward to the Board on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of each kind of beverage, except beer and nontaxable light wines, sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this act upon the beverages set forth in said report."

SEC. 13. That section 25 of the act be amended so as to read as follows:

"No licensee under this act shall allow any person who has, within 5 years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within 10 years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor allow any minor under the age of 21 years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of 18 years to sell, give, furnish, or distribute beer and light wines."

SEC. 14. That subsection (a) of section 28 of the said act be amended so as to read as follows:

"(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking, or in any vehicle in or upon the same, or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises, or in any place to which the public is invited (for which a license under this act has been issued) at a time when the sale of such alcoholic beverage on the premises is prohibited by this act or by the regulations promulgated thereunder. No person shall be drunk or intoxicated in any street, alley, park, or parking, or in any vehicle in or upon the same or in any place to which the public is invited or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person."

SEC. 15. That subsection (b) of section 28 of the said act be amended so as to read as follows:

"(b) Any person violating the provisions of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 30 days or by both such fine and imprisonment in the discretion of the court for the first offense; by a fine of not more than $200 or by imprisonment for not more than 60 days or by both such fine and imprisonment in the discretion of the Court for the second offense, or by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment in the discretion of the court for each subsequent offense."

With the following committee amendments:

On page 2, line 13, insert "Sec. 6" at the beginning of the paragraph, before the words "The right."

On page 3, line 9, insert the words "receivers or other representatives of a court" after the word "thereof,".

On page 3, line 11, insert the word "such" between the words "have" and "other."

On page 4, line 14, strike out the word "beverage" and insert in lieu thereof the word "nonbeverage."

On page 9, line 7, insert the words "Sec. 17" at the beginning of the paragraph, before the words "if any licensee."

On page 12, line 17, insert the words "Sec. 25" at the beginning of the paragraph, before the words "No licensee."

On page 13, line 7, change the two commas in that line to semicolons.

On page 13, line 10, change the comma at the end of that line to a semicolon.

The committee amendments were agreed to.

The Clerk read the following further committee amendment:

Page 14, after line 8, insert:

SEC. 16. That section 18 of the said act is amended to read as follows:

"SEC. 18. If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Commissioners as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That, with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than $10. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow, or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer: *Provided, however,* That, with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than $10. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section, the word "manufacturer" shall include any stockholder holding directly or indirectly 25 percent or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manufacture of beverages outside of the District of Columbia."

SEC. 17. That section 19 of the said act is amended to read as follows:

"SEC. 19. If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the Board may, in its discretion, revoke the license issued in respect of the business in which such wholesaler is interested, subject to review by the Commissioners as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however,* That with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article or property costing such wholesaler not more than $10. No retail licensee shall receive or accept any loan or gift of money from such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler: *Provided, however,* That with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow, or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than $10. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word "wholesaler" shall include any stockholder holding directly or indirectly 25 percent or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E."

SEC. 18. That section 23 of the said act is amended by striking therefrom the words "35 cents" immediately preceding the words "for every wine gallon of wine", and inserting in lieu thereof the words "10 cents".

SEC. 19. That section 25 of the said act is amended to read as follows:

"SEC. 25. No licensee under this act shall allow any person who has, within 10 years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor allow any minor under the age of 21 years of age, to sell, give, furnish, or distribute any beverage, except beer, or any minor under the age of 18 years of age to sell, give, furnish, or distribute beer."

Mrs. NORTON. Mr. Speaker, I offer an amendment to the committee amendment.

The Clerk read as follows:

Amendment offered by Mrs. NORTON to the committee amendment: Page 17, line 20, after the word "cents", insert "and by striking therefrom the words '50 cents' immediately preceding the words 'for every 1 gallon of champagne or any wine artificially carbonated' and insert in lieu thereof '15 cents'".

Mrs. NORTON. Mr. Speaker, I offer a further committee amendment.

The Clerk read as follows:

Page 18, line 4, after the word "beer", insert a new section:

"SEC. 20. No licensee holding a retailer's license, classes A, B, C, D, or E as provided for in the act entitled 'An act to control the manufacture, control, transportation, possession, and sale of alcoholic beverages in the District of Columbia, approved January 24, 1934', shall transport in any manner whatsoever into the District of Columbia or cause to be transported in any manner whatsoever into the District of Columbia any alcoholic beverages, except beer."

The amendments to the committee amendment were agreed to.

The committee amendment as amended was agreed to.

The bill was ordered to be engrossed, read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mrs. NORTON. Mr. Speaker, there are two other bills on the calendar, but because the author of the bills is not present I have promised to reserve them until the next District day.

This seems to finish the business of the committee for the day.

ENROLLED BILL SIGNED

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H. R. 2046. An act to compensate the Chippewa Indians of Minnesota for lands set aside by treaties for their future homes and later patented to the State of Minnesota under the Swamp Land Act.

BILLS PRESENTED TO THE PRESIDENT

Mr. PARSONS, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President for his approval bills of the House of the following titles:

H. R. 2046. An act to compensate the Chippewa Indians of Minnesota for lands set aside by treaties for their future homes and later patented to the State of Minnesota under the Swamp Land Act.

H. R. 6114. An act to amend section 128 of the Judicial Code, as amended.

ADJOURNMENT

Mrs. NORTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 34 minutes p. m.) the House, in accordance with its previous order, adjourned until tomorrow, May 28, 1935, at 11 o'clock a. m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

355. A communication from the President of the United States, transmitting a list of judgments rendered by the

Court of Claims which require an appropriation for their payment, amounting to $245,156.21 (H. Doc. No. 199); to the Committee on Appropriations and ordered to be printed.

356. A communication from the President of the United States, transmitting schedule of a claim allowed by the General Accounting Office against a former collector of customs, amounting to $1,488.62 (H. Doc. No. 200); to the Committee on Appropriations and ordered to be printed.

357. A communication from the President of the United States, transmitting drafts of proposed provisions pertaining to the appropriations for the United States Tariff Commission, 1936 (H. Doc. No. 201); to the Committee on Appropriations and ordered to be printed.

358. A communication from the President of the United States, transmitting an estimate of appropriation for the Navy Department, in the sum of $291, to pay claims for damages by collision with naval vessels (H. Doc. No. 202); to the Committee on Appropriations and ordered to be printed.

359. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the legislative establishment, House of Representatives, for the fiscal year 1935, in the sum of $15,000 (H. Doc. No. 203); to the Committee on Appropriations and ordered to be printed.

360. A communication from the President of the United States, transmitting draft of a proposed provision pertaining to an existing appropriation of the Department of Agriculture for the fiscal year 1935 (H. Doc. No. 204); to the Committee on Appropriations and ordered to be printed.

361. A communication from the President of the United States, transmitting records of judgments rendered against the Government by the United States district courts, as submitted by the Attorney General through the Secretary of the Treasury, and which require an appropriation for their payment, as follows: Department of Labor, $2,664.60; Navy Department, $118,175.24; Treasury Department, $2,500; War Department, $21,871.64; total, $145,211.48 (H. Doc. No. 205); to the Committee on Appropriations and ordered to be printed.

362. A communication from the President of the United States, transmitting an estimate of appropriation for the Treasury Department, for the payment of claims which may be settled and certified by the Comptroller General of the United States under the provisions of the act entitled "An act to provide relief to Government contractors whose costs of performance were increased as a result of compliance with the act approved June 16, 1933, and for other purposes", approved June 16, 1934 (H. Doc. No. 206); to the Committee on Appropriations and ordered to be printed.

363. A communication from the President of the United States, transmitting deficiency estimates of appropriations for the fiscal years 1933 and 1934 in the sum of $1,039.21, and supplemental estimates of appropriations for the fiscal years 1935 and 1936 in the sum of $385,000, amounting in all to $386,039.21, for the Department of Justice (H. Doc. No. 207); to the Committee on Appropriations and ordered to be printed.

364. A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Treasury Department for the fiscal year ending June 30, 1936, pertaining to the Bureau of the Budget, amounting to $43,000 (H. Doc. No. 208); to the Committee on Appropriations and ordered to be printed.

365. A communication from the President of the United States transmitting estimates of appropriations submitted by the several executive departments and independent offices to pay claims for damages to privately owned property, in the sum of $16,024.81, which have been considered and adjusted, and which require appropriations for their payment (H. Doc. No. 209); to the Committee on Appropriations and ordered to be printed.

366. A communication from the President of the United States, transmitting schedules of claims amounting to $184,588.87, allowed by the General Accounting Office (H. Doc. No. 210); to the Committee on Appropriations and ordered to be printed.

367. A letter from the Chairman of the Reconstruction Finance Corporation, transmitting a report of the activities and expenditures of the Corporation for April 1935, including statements of authorizations made during that month, and showing the name, amount, and rate of interest or dividend in each case (H. Doc. No. 211); to the Committee on Banking and Currency and ordered to be printed.

368. A letter from the Federal Power Commission, transmitting three copies of the report for the State of Maine, pursuant to Public Resolution No. 18, Seventy-third Congress (S. J. Res. 74), approved April 14, 1934 (rate series no. 2, State report no. 2); to the Committee on Interstate and Foreign Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. LANHAM: Committee on Public Buildings and Grounds. H. R. 7926. A bill to repeal the limitation on the sale price of the Federal Building at Main and Ervay Streets, Dallas, Tex.; without amendment (Rept. No. 1019). Referred to the Committee of the Whole House on the state of the Union.

Mr. LANHAM: Committee on Public Buildings and Grounds. H. R. 7235. A bill to make provision for suitable quarters for certain Government services at El Paso, Tex., and for other purposes; with amendment (Rept. No. 1020). Referred to the Committee of the Whole House on the state of the Union.

Mr. DUFFY of New York: Committee on the Judiciary. S. 2688. An act to amend an act entitled "An act to regulate the manner in which property shall be sold under orders and decrees of any United States courts", approved March 3, 1893, as amended; without amendment (Rept. No. 1021). Referred to the Committee of the Whole House on the state of the Union.

Mr. MONTAGUE: Committee on the Judiciary. Senate Joint Resolution 42. Joint resolution to amend section 289 of the Criminal Code; without amendment (Rept. No. 1022). Referred to the House Calendar.

Mr. STARNES: Committee on Immigration and Naturalization. H. R. 7120. A bill to provide for the exclusion and expulsion of alien Fascists and Communists; without amendment (Rept. No. 1023). Referred to the Committee of the Whole House on the state of the Union.

Mr. PLUMLEY: Committee on War Claims. Senate Joint Resolution 89. Joint resolution directing the Comptroller General to readjust the account between the United States and the State of Vermont; without amendment (Rept. No. 1024). Referred to the Committee of the Whole House on the state of the Union.

Mr. HOEPPEL: Committee on War Claims. S. 672. An act for the relief of the city of Baltimore; without amendment (Rept. No. 1025). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII,

Mr. BEITER: Committee on War Claims. H. R. 7727. A bill to confer jurisdiction on the Court of Claims to hear and determine the claim of George B. Marx, Inc.; without amendment (Rept. No. 1026). Referred to the Committee of the Whole House.

Mr. GILLETTE: Committee on Foreign Affairs. H. R. 5646. A bill for the relief of certain officers and employees of the Foreign Service of the United States who, while in the course of their respective duties, suffered losses of personal property by reason of catastrophes of nature and other causes; with amendment (Rept. No. 1027). Referred to the Committee of the Whole House.

Mr. BEITER: Committee on War Claims. H. R. 6297. A bill for the relief of Leon Frederick Ruggles; without amendment (Rept. No. 1028). Referred to the Committee of the Whole House.

Mr. DEEN: Committee on War Claims. H. R. 3147. A bill for the relief of Will A. Helmer; without amendment (Rept. No. 1029). Referred to the Committee of the Whole House.

Mr. GILLETTE: Committee on Foreign Affairs. S. 39. An act for the relief of the estate of William Bardel; without amendment (Rept. No. 1030). Referred to the Committee of the Whole House.

Mr. HOEPPEL: Committee on War Claims. H. R. 8236. A bill for the relief of sundry claimants and for other purposes; without amendment (Rept. No. 1031). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CARMICHAEL: A bill (H. R. 8229) to amend the act approved June 12, 1934, relating to the granting of the consent of Congress to certain bridge construction across the Tennessee River at a point between the city of Sheffield, Ala., and the city of Florence, Ala.; to the Committee on Interstate and Foreign Commerce.

By Mr. COCHRAN: A bill (H. R. 8230) to authorize the construction and maintenance of garages for employees of Veterans' Administration facilities; to the Committee on World War Veterans' Legislation.

By Mr. COLLINS: A bill (H. R. 8231) to authorize the distillation of brandy from dates; to the Committee on Ways and Means.

Also, a bill (H. R. 8232) to provide for the manufacture of apricot brandy and the use of such brandy in the fortification of apricot wines, and for other purposes; to the Committee on Ways and Means.

By Mr. TOBEY: A bill (H. R. 8233) to authorize the Administrator of Veterans' Affairs to pay compensation to the dependents of incompetent veterans who disappear; to the Committee on World War Veterans' Legislation.

By Mr. REED of Illinois: A bill (H. R. 8234) to authorize the coinage of 50-cent pieces in commemoration of the one hundredth anniversary of the founding of the city of Elgin, Ill., and the erection of a heroic pioneer memorial; to the Committee on Coinage, Weights, and Measures.

By Mr. HILL of Alabama: A bill (H. R. 8235) authorizing an appropriation to the American Legion for its use in effecting a settlement of the remainder due on, and the reorganization of, Pershing Hall, a memorial already erected in Paris, France, to the commander in chief, officers, and men of the American Expeditionary Forces; to the Committee on Military Affairs.

By Mr. WHITE: Joint Resolution (H. J. Res. 302) to provide for the designation of the road (truck trail) being constructed by Civilian Conservation Corps forces along the Salmon River, traversing a primitive area and crossing central Idaho, as the "Robert Fechner Trail"; to the Committee on Roads.

MEMORIALS

Under clause 3 of rule XXII, memorials were presented and referred as follows:

By the SPEAKER: Memorial of the Legislature of the Territory of Hawaii, proposing certain amendments to the land laws of the Territory; to the Committee on the Territories.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HOEPPEL: A bill (H. R. 8236) for the relief of sundry claimants, and for other purposes; to the Committee on War Claims.

By Mr. COSTELLO: A bill (H. R. 8237) extending the benefits of the Emergency Officers' Retirement Act to Cornelius O. Bailey; to the Committee on Pensions.

By Mr. EATON: A bill (H. R. 8238) granting a pension to Sarah Hannah Allison; to the Committee on Invalid Pensions.

By Mr. KNIFFIN: A bill (H. R. 8239) granting a pension to Catherine Goodrich; to the Committee on Pensions.

By Mr. McSWAIN: A bill (H. R. 8240) granting the Distinguished Service Medal to James E. Martin; to the Committee on Military Affairs.

By Mr. ROBSION of Kentucky: A bill (H. R. 8241) granting a pension to Ollie Cassada; to the Committee on Pensions.

By Mr. TOBEY: A bill (H. R. 8242) authorizing the President to order Louis U. LaBine before a retiring board for a hearing of his case and upon the findings of such board to determine whether or not he be placed on the retired list with the rank and pay held by him at the time of his discharge; to the Committee on Military Affairs.

Also, a bill (H. R. 8243) granting an increase of pension to Ianthe S. Webber; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

8629. By Mr. BELL: Resolution of the board of governors of the Automobile Club of Missouri, protesting against the enactment of excise-tax measures on motor cars, accessories, and parts; to the Committee on Ways and Means.

8630. Also, petition of the Southwestern Bell Telephone Co. employees, Kansas City, Mo., against enactment of Wagner labor-relations bill; to the Committee on Labor.

8631. Also, petition of the Southwestern Bell Telephone Co. Employees' Association, Joplin, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8632. Also, petition of a committee of employees, representatives of the Sheffield Steel Corporation Employees Congress, Kansas City, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8633. Also, petition of employees of the Southwestern Bell Telephone Co., at Sedalia, Mo., protesting against the enactment of the Wagner labor-relations bill; to the Committee on Labor.

8634. By Mr. BRUNNER: Petitions of approximately 2,200 residents of the Second Congressional District, New York (Queens County), protesting against the religious persecution in Mexico, and requesting the passage of the resolution presented by Representative JOHN P. HIGGINS, of Massachusetts; to the Committee on Foreign Affairs.

8635. By Mr. GINGERY: Petition of the Shirt Workers Union, Amalgamated Clothing Workers of America, Curwensville, Pa., urging extension of the National Industrial Recovery Act for 2 years, and favoring the Wagner labor bill; to the Committee on Labor.

8636. By Mr. GOODWIN: Petition of 48 farmers of Copake, Columbia County, N. Y., opposing the Wheeler-Eastman bill (S. 1629); to the Committee on Interstate and Foreign Commerce.

8637. By Mr. KVALE: Petition signed by 620 farmers and businessmen of Yellow Medicine County, Minn., urging adoption of the proposed amendments to the Agricultural Adjustment Act and House bill 6977; to the Committee on Agriculture.

8638. By Mr. PFEIFER: Petition of the Railway Labor Executives Association, Washington, D. C., favoring the Crosser bill (H. R. 8121) and the Wagner bill (S. 2862); to the Committee on Interstate and Foreign Commerce.

8639. By Mr. TRUAX: Petition of the Toledo Photo Engravers' Union, No. 15, Toledo, Ohio, by their corresponding secretary, Ralph Ollivier, urging support of the Wagner labor-disputes bill as the need for a board with power to enforce its decisions is obvious, and the reenactment of the National Industrial Recovery Act in which are included codes limiting work hours in industries; to the Committee on Labor.

8640. Also, petition of the Pilsener Brewing Co., Cleveland, Ohio, by their manager, James C. Wolf, urging favorable endorsement of the continuance of the National Industrial Recovery Act; to the Committee on Labor.

8641. Also, petition of the general subcommittee of the Switchmen's Union of North America, representing the employees of the New York Central Railroad, lines west, by John W. Wolf, general chairman, asking for support for an early passage of House Joint Resolution 219, which provides for an extension of the Emergency Railroad Transportation Act, which expires on June 16, 1935; to the Committee on Interstate and Foreign Commerce.

8642. Also, petition of 50 Alameda County clubs, 6,000 members, Oakland, Calif., by Glen J. Hudson, asking favorable action on the McGroarty bill (Townsend plan); to the Committee on Ways and Means.

8643. Also, petition of Massillon Trades and Labor Assembly, Massillon, Ohio, by their corresponding secretary, Robert J. Siffrin, asking assistance in a move to prevent the building of the proposed Beaver Mahoning Canal, as they are opposed to the building of this canal as they believe it will eventually mean the removal of the steel mills from the Massillon-Canton district, and requesting a favorable vote for the Wagner-Connery bill; to the Committee on Labor.

8644. By the SPEAKER: Petition of the board of governors of the Washington State Bar Association and the board of trustees of the Seattle Bar Association, requesting that there be constructed a new judicial building at Seattle, Wash.; to the Committee on Public Buildings and Grounds.

SENATE

TUESDAY, MAY 28, 1935

(Legislative day of Monday, May 13, 1935)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. ROBINSON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Monday, May 27, 1935, was dispensed with, and the Journal was approved.

CALL OF THE ROLL

Mr. ROBINSON. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Copeland	Lewis	Robinson
Ashurst	Costigan	Logan	Russell
Austin	Couzens	Lonergan	Schall
Bachman	Dickinson	McAdoo	Schwellenbach
Bankhead	Dieterich	McGill	Sheppard
Barbour	Donahey	McKellar	Shipstead
Barkley	Fletcher	McNary	Smith
Bilbo	Frazier	Maloney	Steiwer
Black	George	Metcalf	Thomas, Okla.
Bone	Gerry	Minton	Thomas, Utah
Borah	Glass	Moore	Townsend
Brown	Gore	Murphy	Trammell
Bulkley	Guffey	Murray	Truman
Bulow	Hale	Neely	Tydings
Burke	Harrison	Norbeck	Vandenberg
Byrd	Hastings	Norris	Van Nuys
Byrnes	Hatch	Nye	Wagner
Capper	Hayden	O'Mahoney	Walsh
Caraway	Johnson	Overton	Wheeler
Carey	Keyes	Pittman	White
Chavez	King	Pope	
Connally	La Follette	Radcliffe	

Mr. LEWIS. I announce the absence of the Senator from North Carolina [Mr. BAILEY], the Senator from Missouri [Mr. CLARK], the Senator from Louisiana [Mr. LONG], and the Senator from Nevada [Mr. MCCARRAN], who are unavoidably detained from the Senate.

I also announce the absence of the Senator from Massachusetts [Mr. COOLIDGE], the Senator from Wisconsin [Mr. DUFFY], and the Senator from North Carolina [Mr. REYNOLDS], in attendance at West Point as members on the part of the Senate of the Board of Visitors to the United States Military Academy.

Mr. AUSTIN. I announce that my colleague the junior Senator from Vermont [Mr. GIBSON] is unavoidably absent, and that the Senator from Pennsylvania [Mr. DAVIS] is absent because of illness.

The VICE PRESIDENT. Eighty-six Senators have answered to their names. A quorum is present.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its reading clerks, announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H. R. 3641. An act to amend section 559 of the Code of the District of Columbia as to restriction on residence of members of the fire department;

H. R. 3642. An act to amend section 483 of the Code of the District of Columbia as to residence of members of the police department;

H. R. 6510. An act to amend the District of Columbia Alcoholic Beverage Control Act;

H. R. 6623. An act to amend the Code of Laws for the District of Columbia in relation to providing assistance against old-age want;

H. R. 6656. An act to authorize the Pennsylvania Railroad Co., by means of an overhead bridge, to cross New York Avenue NE., to extend, construct, maintain, and operate certain industrial side tracks, and for other purposes;

H. R. 7167. An act to provide for unemployment compensation in the District of Columbia, authorize appropriations, and for other purposes;

H. R. 7447. An act to amend an act to provide for a Union Railroad Station in the District of Columbia, and for other purposes;

H. R. 7781. An act to define the election procedure under the act of June 18, 1934, and for other purposes;

H. R. 7874. An act to change the name of the German Orphan Asylum Association of the District of Columbia to the German Orphan Home of the District of Columbia;

H. J. Res. 201. Joint resolution giving authority to the Commissioners of the District of Columbia to make special regulations for the occasion of the Seventieth National Encampment of the Grand Army of the Republic, to be held in the District of Columbia in the month of September 1936, and for other purposes, incident to said encampment; and

H. J. Res. 280. Joint resolution for the designation of a street or avenue in the Mall to be known as "Maine Avenue."

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 1522. An act to provide funds for cooperation with public-school districts in Glacier County, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1523. An act to provide funds for cooperation with the public-school board at Wolf Point, Mont., in the construction or improvement of a public-school building to be available to Indian children of the Fort Peck Indian Reservation, Mont.;

S. 1524. An act to provide funds for cooperation with school district no. 23, Polson, Mont., in the improvement and extension of school buildings to be available to both Indian and white children;

S. 1525. An act to provide funds for cooperation with joint school district no. 28, Lake and Missoula Counties, Mont., for extension of public-school buildings to be available to Indian children of the Flathead Indian Reservation;

S. 1526. An act to provide funds for cooperation with the school board at Brockton, Mont., in the extension of the public-school building at that place to be available to Indian children of the Fort Peck Indian Reservation;

S. 1528. An act for expenditure of funds for cooperation with the public-school board at Poplar, Mont., in the construction or improvement of public-school building to be available to Indian children of the Fort Peck Indian Reservation, Mont.;

S. 1530. An act to authorize appropriations for the completion of the public high school at Frazer, Mont.;

S. 1533. An act to provide funds for cooperation with Marysville School District, No. 325, Snohomish County,